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REPORT ON OTHER MEETINGS AND ACTIVITIES

Note by the Secretariat

Addendum

Contribution from the Council of Europe

The following contribution, entitled "The Council of Europe and Human Rights", has been drawn up by the Council to address the first objective of the World Conference on Human Rights, namely:

> "To review and assess the progress that has been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles to further progress in this area, and ways in which they can be overcome".

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PREFACE

The present report, on the human rights activities of the Council of Europe in recent years, has been drawn up for the World Conference on Human Rights in the spirit of United Nations General Assembly resolution 45/155. A primary objective of the Conference, as set out in that resolution, is to review and assess the progress that has been made in the field of human rights since the adoption of the (1948) Universal Declaration of Human Rights and to identify obstacles and ways in which they can be overcome to further progress in this area.

In this report, the Secretariat of the Council of Europe has attempted to assess the progress made in the promotion and protection of human rights within Europe, to identify problems that remain and new challenges that lie ahead and also to set out its plans for future action. While the Council of Europe may boast several important achievements in this field, it does not approach this Conference in a spirit of self-satisfaction but rather in a spirit of constructive criticism.

* * *

In the preparations for the World Conference, the Council of Europe decided it could most usefully contribute by facilitating a cross-regional dialogue on some key issues of concern. A separate report of that meeting - held at the Palais de l'Europe, Strasbourg, France, in January 1993 - has also been submitted to the World Conference.

* * *

Strasbourg, May 1993

THE COUNCIL OF EUROPE AND HUMAN RIGHTS

I. INTRODUCTION TO THE COUNCIL OF EUROPE

The Council of Europe was founded in 1949 as a European organisation for intergovernmental and parliamentary co-operation. Its aim is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress (Article 1 of the Statute). At present, it has 26 member States.[1] A further 11 States, from Central and Eastern Europe, have applied for membership.[2]

The Council of Europe's statutory principles are pluralist democracy, respect for human rights and the rule of law. Its members recognise the principles of the rule of law and the enjoyment by all persons within their jurisdiction of human rights and fundamental freedoms (Article 3 of the Statute).

The Council of Europe's structure reflects the democratic institutions of its member States: a Committee of Ministers, consisting of the Ministers of Foreign Affairs from each of the member States, and a Parliamentary Assembly, comprising delegations of parliamentarians appointed by each national parliament. These two bodies are serviced by a European Secretariat under the authority of a Secretary General elected by the Assembly.

The **Committee of Ministers**, which meets at least twice a year at ministerial level and throughout the year at the level of the member States' Permanent Representatives, provides opportunities for political dialogue at ministerial and other levels on the development of European co-operation, with reference to the Organisation's principles. It organises intergovernmental co-operation in those areas in which the Council operates.

The Committee of Ministers works chiefly through European Conventions and Agreements and Recommendations to the member States. Its decisions are prepared by committees of government experts and other specialists, and this offers a broad framework for contact, exchange and discussion. Conferences of specialised ministers serve as platforms for political dialogue in specific fields of activity.

The **Parliamentary Assembly**, which is the first international parliamentary assembly in history, provides a political forum for public debate and for initiatives to promote European co-operation. It gives this co-operation a democratic legitimacy.

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[1] This includes the 12 members of the European Economic Community, which is a distinct entity.

[2] This document is current as of 1 May 1993. On 14 May 1993, Estonia, Lithuania and Slovenia became members of the Council of Europe, bringing the total membership to 29.

Although the Assembly is a consultative body and has no legislative powers, it is a major driving force within the Council of Europe. Its recommendations to the Committee of Ministers have been the starting point for action in many key areas of the Council of Europe's work.

In 1989 the Parliamentary Assembly introduced Special Guest Status in order to forge closer links with the parliaments of Central and Eastern European countries. As of April 1993, 13 States enjoy this Special Guest Status and another three have requested it.[3]

The Council of Europe's structures are completed by a **Standing Conference of Local and Regional Authorities of Europe** (CLRAE), a semi-parliamentary body consisting of national delegations of local and regional elected representatives. Its aim is to allow local and regional elected representatives to pool their experience and express their views and interests regarding European co-operation.

1. Pluralist Democracy

According to the Council's Statute, individual freedom, political liberty and the rule of law, to which the member States are committed, are the basis of "all genuine democracy". This means that pluralist elections must be held at reasonable intervals, by secret ballot and universal suffrage, to parliaments which enjoy a high degree of sovereignty and comprise political party representatives who are free to organise and express themselves.

The Parliamentary Assembly and the Committee of Ministers refer to these principles and standards in considering applications for membership.

2. The Protection of Human Rights and Fundamental Freedoms

These rights and freedoms were enshrined in the Council of Europe's two major instruments, the European Convention on Human Rights of 4 November 1950 and the European Social Charter of 18 October 1961.

These two instruments establish lists of rights which must be guaranteed to everyone within the jurisdiction of the member States. They are accompanied by collective supervision and guarantee procedures at European level.

These instruments have recently been supplemented by the European Convention for the prevention of torture and inhuman or degrading treatment or punishment which was opened for signature on 26 November 1987 and came into force on 1 February 1989.

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[3] See Appendix V.

In addition to these legal instruments, many other agreements are reached and recommendations made in the field of human rights, by the Foreign Ministers and the Parliamentary Assembly, which can have significant impact on the policies of the member States in this area.[4]

3. The Rule of Law

The Council of Europe's instruments embody a number of important principles applying to States ruled by law: the principle of lawfulness, the right to the sound administration of justice, access to courts, the guarantee of a fair and public hearing, impartiality of judges and proportionality of penalties. These principles must guide the actions of government and other authorities, as well as the judiciary and legislature.

* * *

[4] For a list of some key recommendations from the Committee of Ministers to member States concerning human rights, *see* Appendix VI.

II. THE COUNCIL OF EUROPE'S MAIN SUPERVISORY MECHANISMS IN THE HUMAN RIGHTS FIELD

1. The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (European Convention on Human Rights)

The European Convention on Human Rights was concluded in Rome in 1950, representing for the then 15 signatory governments "the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration of Human Rights". In the 40 years since it entered into force (1953), the Convention has matured into probably the strongest and most effective human rights treaty there is. Undoubtedly, a large measure of its effectiveness stems from the political will of its States parties and their common system of values. The Convention has now been ratified by all 26 member States of the Council of Europe, every one of which has voluntarily accepted the compulsory jurisdiction of the European Court of Human Rights (article 46) as well as the right of individual petition (article 25).

The Convention itself is an international treaty by which the member States of the Council of Europe have undertaken to guarantee certain fundamental human rights to all those within their jurisdiction. Its importance lies not only in the breadth of the rights included but also in the protection machinery set up in Strasbourg to investigate alleged violations and ensure compliance with the obligations under the Convention. It is kept under constant review with the aim of enhancing the protection it affords, either by extending the list of guaranteed rights or by improving the existing procedures.

But the Convention and its mechanisms are not designed to take the place of national systems for the protection of human rights. Rather their purpose is to provide an international guarantee in addition to the right of redress in individual states. In 21 of the 26 member States, the Convention has been incorporated into domestic law so that any person can submit a claim or an appeal to a national court or authority based directly on its provisions. But even in those countries where it is not incorporated into internal law, there should be no conflict with the Convention's provisions.

* * *

The international protection machinery has two modes of operation. The first enables any State Party to complain to the European Commission of Human Rights if it considers that another State Party is not fulfilling its obligations under the Convention.[5] The second and more familiar mode enables any individual to apply directly to the same Commission and file a complaint

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[5] Inter-state applications brought before the Commission by one member State against another have involved, among other things, the situation of human rights in Greece under the "Colonels" regime, methods of interrogating terrorist suspects in Northern Ireland (the only inter-state case so far referred to the Court), the consequences of Turkish military action in Cyprus and the situation of human rights in Turkey between 1980 and 1982.

against any State Party which has made a specific declaration recognising the Commission's competence in the matter. As already stated, all 26 States Parties have made such declarations.[6]

Under the Convention there are three bodies which have a role to play in deciding on the outcome of a petition lodged, either by an individual or a State Party. These are:

- the European Commission of Human Rights
- the European Court of Human Rights
- the Committee of Ministers of the Council of Europe

(a) The European Commission of Human Rights

The European Commission of Human Rights is responsible for examining all alleged violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms by a State Party, whether emanating from (a) another State Party or (b) any person (natural or legal), non-governmental organisation or group of individuals claiming to be the victim of a violation, provided in the latter case that the State against which the allegation is made has accepted the Commission's competence to examine petitions. Since the Commission began functioning in 1955, it has registered well over 20,000 applications, the vast majority of which are submitted by individuals and groups.

The Commission is composed of as many members as there are Contracting States. Members are elected by the Committee of Ministers of the Council of Europe. They hold office for six years, but may be re-elected. As members of the Commission who exercise judicial functions, they are entirely independent and do not represent the State in respect of which they were elected.

The Commission's procedure has two stages. The first involves an examination of the admissibility of the application. A number of grounds for inadmissibility are laid down in the Convention, and it is only once the Commission is satisfied that none of these are applicable that it may proceed to an examination of the merits of the complaints. Committees of three members of the Commission may declare applications inadmissible when such a decision is unanimous and can be taken without further examination. The Commission, either in plenary or in a Chamber (of which there are currently two), may declare applications inadmissible either *de plano* or after obtaining the observations of the Government concerned. Approximately 90% of registered cases are rejected as inadmissible. Decisions on admissibility are final.

Once an application has been declared admissible, either by the plenary Commission or a Chamber, there is a two-fold role for the Commission at the second stage of its procedure. Firstly, it places itself at the disposal of the parties with a view to securing a friendly settlement

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[6] Most recently, Hungary in November 1992 and Poland in May 1993.

on the basis of respect for human rights; over 10% of cases declared admissible have resulted in a friendly settlement, often providing for pecuniary compensation for the victim, and sometimes referring to a change in the law of the State concerned. Secondly, where no settlement can be secured, the Commission prepares a report in which it establishes the facts and states its opinion as to whether these facts disclose a violation of the Convention. This opinion is not technically binding, the final decision resting with either the Committee of Ministers or, if the case is referred to it by the Commission or the State Party, the European Court of Human Rights. Protocol No. 9 to the Convention, not yet in force, will give the individual the right to refer the case to the Court, subject to leave being granted.

There has been a massive increase in the number of applications submitted to the Commission in the last few years, and this has created a significant backlog resulting in sometimes unacceptable delays in dealing with applications. Moreover, the demands made on the Commission are likely to become greater as applications begin to arrive from new and future Contracting States. Procedural improvements, in particular the introduction of Chambers and committees, have attempted to increase the Commission's efficiency. A large number of straightforward cases, particularly those which are clearly inadmissible, are examined within a relatively short period, but the length of time taken to deal with those cases which raise serious issues remains the aspect of the system which causes most concern.

One of the most important attributes of the Convention system is its accessibility to anyone who wishes to lodge a complaint. There are no costs involved in introducing an application to the Commission, and no legal representation is required. Nevertheless, it is preferable for applicants to have the assistance of a lawyer. There is provision for legal aid in an Addendum to the Commission's Rules of Procedure, but the amounts made available for legal aid are to be regarded as a contribution towards the costs and therefore might be insufficient to ensure satisfactory representation. This could impair effective access to the Convention system. The availability of adequate legal aid, either through the Council of Europe or at the national level, is therefore a further area in which significant progress could be made.

While the Commission deals with a wide range of complaints under the Convention, in recent years the majority of applications which it has examined have concerned the right to a fair hearing (Article 6 of the Convention), and a large number of these have concerned the length of court proceedings. However, there have also been important cases under Article 5 of the Convention, concerning the lawfulness of detention and the right to take proceedings, whereby the lawfulness of detention can be speedily decided by a court. Other important cases have concerned freedom of expression (Article 10 of the Convention) and the right to respect for private and family life (Article 8 of the Convention). A number of cases involving allegations of torture and inhuman treatment (Article 3 of the Convention) have also been examined.

(b) The European Court of Human Rights

Within three months of the Commission's report being sent to the Committee of Ministers, the case may be referred to the European Court of Human Rights.

The Court sits in Strasbourg once a month for at least one week. It is made up of a number of judges equal to that of member States of the Council of Europe (i.e. now 26). They are elected by the Parliamentary Assembly for nine-year terms. As with members of the Commission, the judges must either possess qualifications for appointment to high judicial office or be jurists of recognised competence. Like members of the Commission, the judges sit in their individual capacity and do not represent the country that nominated them. They enjoy complete independence in the performance of their duties. The Court's Rules of Procedure prohibit a judge from exercising his/her functions while a member of Government or while holding a post or exercising a profession which is likely to affect confidence in his/her independence; they also prohibit a judge from participating in a case in which a conflict of interests might arise.

For a case to go to the Court, the defendant State must have accepted the *compulsory jurisdiction of the Court*[7] or, failing that, agreed to accept the Court's jurisdiction in the particular case.

At present, only the Commission or any State concerned can refer a case to the Court. Individuals complaining of a breach of the Convention enjoy no such right - although once the case is before the Court, they or their lawyers are normally permitted to present written and oral arguments at the hearing; the complainant can also be asked to appear before the Court as a witness.

The Court examines the case in the light of the report of the Commission, together with any further written evidence or legal argument. There will also normally be a public hearing in Strasbourg when the delegate of the Commission and lawyers for the respondent government and the applicant will present or supplement their submissions and may be questioned about them by the judges.

After the hearing, the judges deliberate in private and vote on whether they consider there has been a breach of the Convention. The view of the majority forms the decision of the Court, but separate and dissenting opinions may be annexed to the judgment. Judgments are delivered in open court. Usually the President or Vice-President reads the part of the judgment containing the Court's legal findings, the full text being made available afterwards.

The judgment of the Court is final and there is no appeal. It is binding on the State concerned but the Court has no enforcement powers of its own. The Committee of Ministers of the Council of Europe supervises the implementation of the Court's judgments (see below). In

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[7] As mentioned earlier, all 26 States Parties to the Convention have accepted the compulsory jurisdiction of the Court.

appropriate circumstances, the Court can afford the victim of a violation "just satisfaction" which may, for example, include an award of compensation and an order for the reimbursement of costs.

Individual complaints which have been referred to the Court now approach 415 covering an ever-increasing range of issues.[8] Notable examples of these are:

- right of access to the courts in civil matters
- length of legal proceedings
- various aspects of detention (psychiatric patients, terrorist suspects, vagrants)
- criminal procedure
- use of corporal punishment (in schools, or as a judicial punishment)
- prisoners' rights
- control of telephone "tapping" and surveillance of correspondence
- laws on homosexual activities
- social security disputes (health insurance, industrial accidents)
- legal status of illegitimate children
- trade union activities, including the "closed shop"
- immigration, deportation and extradition measures
- legal position of trans-sexuals
- freedom of expression, including restrictions on press reporting
- compulsory sex education in schools
- property rights, including planning and rent controls
- parents' access to children in public care
- trans border flow of information
- data protection

At the time of the first World Conference on Human Rights in 1968, the Council of Europe reported that the European Court of Human Rights had three cases before it. Since its creation in 1959, the Court has delivered some 320 judgments "on the merits" and in a little more than two-thirds of these judgments found a failure to comply with the Convention or an additional protocol. The number of cases referred to the Court in 1970 was seven, in 1980 it was eight, and in 1990 this figure had risen to 61. Last year (1992) 50 cases were referred to the Court. The growth in recent years can be attributed not only to a better informed legal profession and greater media coverage of successful cases, but probably more than anything to an awareness by litigants and lawyers that, in matters touching on fundamental rights, the Court is the final arbiter in Europe.

As the case work of the Court has grown, efforts have continued to refine and improve its procedures. One area in which significant steps have been taken has been the standing of the individual before the Court. Most recently, in 1990, the Ninth Protocol to the European

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[8] A fuller summary of the types of cases referred to the Court is contained in Appendix I.

Convention on Human Rights was concluded. This, when it comes into effect[9], will permit a person, non-governmental organisation or group of individuals who have brought a complaint to the Commission to refer the case to the Court in certain circumstances.

(c) The Committee of Ministers

When a case is not referred to the Court, the Committee of Ministers of the Council of Europe decides, by a two-thirds majority, whether there has been a breach of the Convention. Having found a violation, the Committee of Ministers may then decide that a State must afford the victim "just satisfaction" - i.e. damages, the amounts of which are fixed in consultation with the Commission. Like the judgments of the Court, decisions of the Committee of Ministers are final and member States undertake to regard them as binding.

This quasi-judicial role of the Committee of Ministers has been widely criticised, however, as the Committee of Ministers is composed of representatives of member States who are also representatives of defendants in the procedure. Although very seldom has a defendant State refused to vote in favour of a violation against his own country contrary to the Commission's opinion on the case, most observers nowadays agree that this judicial role entrusted to the Committee of Ministers should be deleted from the Convention.

A second important role assigned to the Committee of Ministers is that of supervising the implementation of the judgments of the European Court of Human Rights. Once it is satisfied that the State concerned has taken satisfactory steps - which might include the payment of damages or changes in domestic law - the Committee of Ministers acknowledges this by adopting a resolution which brings the case to an end.

The supervision of the execution of the Court's judgment by the Committee of Ministers is perhaps one of the main positive features explaining the effectiveness of the European Convention on Human Rights. The fact that member States accept to implement the Court's decision by *inter alia* changing their legislation in order to avoid future violations, contributes essentially to the creation of what may be called a European public order in the field of human rights.

(d) Effect of the Convention

The Convention's achievements have been quite staggering, the case law of the European Commission and Court of Human Rights exerting an ever deeper influence on the laws and social realities of the States parties. The following examples may be mentioned.

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[9] Protocol No. 9 was opened for signature on November 1990 and will enter into force three months after ten member States have expressed their consent to be bound by it. As of April 1993, six member States had done so: Austria, Finland, Hungary, Luxembourg, Netherlands, Norway.

In Austria, where the Convention has the rank of constitutional law, the code of criminal procedures has had to be modified as a result of case-law in Strasbourg; so too the system of legal aid fees for lawyers. In Belgium, amendments have been made to the penal code to ensure equal rights to legitimate and illegitimate children. In Germany modifications have been made to the code of criminal procedure concerning pre-trial detention, various measures have been taken to expedite criminal and civil proceedings, and trans-sexuals have been given legal recognition.

In the Netherlands, where most of the Convention's substantive provisions are endowed with a hierarchically superior status to the Constitution itself, changes have been made in the military criminal code and the law on detention of mental patients. In Ireland, court proceedings have been simplified and civil legal aid and advice schemes set up. Sweden has introduced rules concerning time-limits for expropriation permits and legislation is planned concerning the regulation of building permits. Switzerland has amended its military penal code and completely reviewed its judicial organisation and criminal procedure as applied to the federal army, as well as its civil code as regards deprivation of liberty in reformatory centres.

In France, the law relating to the secrecy of telephone communications had to be altered, while in Italy a new Code of Criminal Procedure was enacted to change the law concerning regulation of detention on remand. In the UK, despite the fact that the Convention has not been incorporated into domestic law (as is also the case in Ireland, Iceland, Norway and Sweden), its constitutional impact cannot be doubted, with changes in the domestic laws being made in the areas of freedom of information, privacy, prison rules, mental health legislation and payments of compensation for administrative miscarriages of justice, among others.

But the effects of the Convention are not limited to the follow-up given to judgments of the Court, decisions of the Commission and findings of violations by the Committee of Ministers. As has been mentioned above, the procedure for friendly settlements under the Convention has also produced significant results in this respect. Indeed, well over a hundred instances can be cited where settlements have been reached either formally or informally, often with the Commission's or the Court's approval, subsequent to concessionary measures taken by the governments concerned.

More generally, national courts in the States parties to the Convention increasingly turn to the Strasbourg case-law when deciding on a human rights issue, and apply the standards and principles developed by the Commission and Court, while many instances can also be cited of States modifying legislation and administrative practices prior to their ratification of the Convention, particularly in the case of those States which have recently joined the Organisation.

(e) Reform of the European Convention on Human Rights

As the case law of the Commission and Court have flourished, this has put increasing strain on its machinery. The backlog of cases pending before the European Commission of

Human Rights is particularly worrying. It now takes on average a little more than five years for a case to be dealt with from the time a complaint is lodged until a final decision is reached (the Commission's decision on admissibility takes on average slightly over one year), and this is often after lengthy domestic court proceedings. The length of proceedings (and the lack of power to impose interim remedies in emergency cases), coupled with the growing number of States parties to the Convention, threatens to undermine the confidence and good will that the system has developed over the years.

Pressure for reform of the system comes from three main sources: firstly, the increase in the number and complexity of cases that are being brought; secondly, the full participation of an ever-increasing number of Central and Eastern European countries; and, thirdly, the movement of the European Community towards a single market and political union with increased awareness of the legal and political importance of human rights protection as a component part of Community concerns.

It is now generally accepted that a *radical* reform of the control mechanism of the Convention is necessary, as well as a simplification of the proceedings, so that individuals can obtain a decision within a reasonable time.

In November 1991, the Committee of Ministers gave absolute priority to speeding up work on the reform of the control mechanisms of the Convention. A year later, they reiterated the importance they attached to this urgent problem and, having also noted the Recommendation of the Parliamentary Assembly in this regard (1194 of 1992), agreed that a search for a rapid solution should feature prominently among the Organisation's priorities. A political decision was needed as soon as possible, and at the latest at the Organisation's first ever Summit of European Heads of State and Government, scheduled to take place in October 1993 in Vienna.

As at the time of this report, two reform proposals are being examined. The first is the idea of a single, full-time Court, which was initially raised at political level at the first European Ministerial Conference on Human Rights in Vienna in March 1985 and currently has the strong support of over a dozen States. The second, more recently advanced by the Netherlands and Sweden, envisages a two-tier judicial system, with the Commission operating like a court of first instance and the Court exercising appellate jurisdiction. The Parliamentary Assembly of the Council of Europe has indicated a clear preference for the former solution.

(f) Future challenges

While the legal mechanisms established by the Council of Europe to promote and protect human rights stand out as undoubtedly the Organisation's major achievement, the system is not free from other weaknesses, in addition to those already mentioned. Among those giving rise to most concern, and on which efforts will increasingly focus in the years to come, are:

- the system's relative impotence vis-à-vis serious, systematic abuses of human rights in the Convention's contracting States, in contrast to the rather lavish amount of detail and care with which relatively minor problems are sometimes tackled by the Convention's organs;

- the relative facility with which the Convention's contracting states may avail themselves of the right of derogation in "exceptional" situations and keep those derogations in force for prolonged periods until such time as the Convention's organs have an opportunity to decide whether or not they are compatible with the Convention.

These are just two of the major challenges facing the legal human rights protection system in Europe in the coming years.

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2. The European Social Charter (1961)

The counterpart of the European Convention on Human Rights in the field of the protection of social and economic rights, the European Social Charter was signed in Turin on 18 October 1961 and came into force on 26 February 1965.

The Social Charter guarantees to the citizens of the Contracting Parties the enjoyment of a total of nineteen fundamental social and economic rights, without any discrimination on the basis of race, religion, sex, national origin, political opinion, etc. Like the European Convention on Human Rights, the Social Charter provides for an international system of control to supervise its application by the Contracting States, of whom there are currently twenty.[10] However, this system is not of a judicial nature.

Monitoring of the application of the Charter is, in fact, carried out by four bodies who base their assessment on the periodic reports which the Governments of the Contracting States submit to the Council of Europe. The analysis of these reports is undertaken in the first place by the Committee of Independent Experts of the European Social Charter, who decide as to whether or not a national situation is in conformity with the provisions of the Charter as interpreted by it. Their decisions are assembled and published as 'Conclusions'. The Governmental Committee establishes its report to the Committee of Ministers, on the basis of these conclusions and the national reports, giving special attention to any situations of non-conformity (negative conclusions). The Parliamentary Assembly also takes part in the supervisory procedure and draws up for the Committee of Ministers an opinion on the way in

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[10] Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Turkey and the United Kingdom.

which the Contracting States are implementing the Charter. The supervisory procedure is concluded before the Committee of Ministers, which may 'make to each Contracting Party any necessary recommendations'.[11]

An important role is also assigned to employees' and employers' organisations, which may submit any relevant observations on the national reports to the Council of Europe.

The aim of the monitoring procedure is to ensure compliance with the standards contained in the Charter and to identify failures in application. States are required to make a specific response to criticism from the supervisory bodies, adapting their legislation, regulations and national practices accordingly.

Monitoring of the application of the Social Charter has helped to create a vast body of case-law. This case-law is essential in determining the scope of the obligations arising from the Charter and in laying down the guidelines for a progressive social policy which the Charter sets out to underpin. It is on the basis, firstly, of the often flexible wording of its provisions and, secondly, of the progressively accumulated case-law that the Social Charter has been able to play its role in developing the social policies of the Contracting States.

Moreover, it is worth noting that the Social Charter can have an impact even before it enters into force in any given country. Indeed, ratification of this instrument requires the State concerned to carry out an in-depth examination of its legislation and practice, with a view to possible amendments in order to comply with the conditions for ratification. To allow for as many States as possible to adhere to the Charter, it is provided that a Contracting Party need accept only a minimum number of provisions, it being understood that the option to accept further provisions at a later stage is acknowledged.

Although not always visible, the practical effects of the Social Charter have been - and continue to be - unquestionable, particularly in the light of the evolution of national legislation in the States which have ratified the instrument over the last decades. Examples of improvements in national situations, pursuant to the Charter, abound.[12]

In 1988, an Additional Protocol was added to the European Social Charter, guaranteeing four new rights. This Protocol has already been signed by fourteen States[13] and ratified by three.[14] It entered into force on 4 September 1992.

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[11] This procedure was modified by the Amending Protocol, see below.

[12] A list of some of the national reforms effected in social legislation and practice can be found in Appendix II.

[13] Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, the Netherlands, Spain, Sweden and Turkey.

[14] Finland, the Netherlands and Sweden.

Like the Committee of Ministers, at the time of the celebration of the 40th anniversary of the Council of Europe in May 1989, the Parliamentary Assembly confirmed the value of the European Social Charter as an essential instrument of reference and an unquestionable source of fundamental rights and principles in the social field, safeguarding and reinforcing pluralist democracy and human rights. In particular, the Committee of Ministers, in its Declaration on the future role of the Council of Europe in European construction, made this safeguarding and reinforcement one of the three priority lines for future intergovernmental action in the Council of Europe.

Nevertheless, it should be recalled that a certain number of the Council of Europe's member States have not yet ratified the Charter, that of the twenty Contracting States only six have accepted *all* of its provisions and that only three have ratified the Additional Protocol.

There have been a number of criticisms of the Charter. Some of them concern its supervision system, *inter alia* the conflicting roles played by the Committee of Independent Experts and the Governmental Committee, which conflict has occasionally led to differences in the juridical interpretation of the Charter. The involvement of four supervisory bodies also implies a long, somewhat cumbersome control procedure. Other criticisms concern the contents of the Charter, which has become somewhat outdated and incomplete with the passage of years.

These criticisms led to the creation by the Committee of Ministers of a Committee for the European Social Charter, following the Informal Ministerial Conference on Human Rights convened in Rome in November 1990. The mandate of this committee is to make proposals to improve the effectiveness of the Social Charter. The Committee, in which representatives of the Governments of the member States and representatives of the Parliamentary Assembly participate, also includes representatives of the International Labour Office and the social partners as observers. It held its first meetings in the spring and summer of 1991. These led to a draft proposal for an Amending Protocol to the Social Charter, which was adopted by the Committee of Ministers on 16 October 1991. This Protocol, opened for signature in Turin on 21 October 1991 on the occasion of the thirtieth anniversary of the adoption of the Charter, modifies the procedures of control of the application of the Charter.

The Amending Protocol clarifies the respective roles of the Committee of Independent Experts and the Governmental Committee, specifying that the assessment made by the Committee of Independent Experts will be done on a juridical basis, and that the Governmental Committee is to prepare the decisions of the Committee of Ministers, particularly by selecting, on the basis of policy considerations, those situations which should be the subject of a recommendation addressed by the Committee of Ministers to each Contracting Party concerned. The Parliamentary Assembly will no longer act as a controlling body as such, but will organise periodic debates in plenary, based on the work of the three Committees.

The Amending Protocol has, to date, been signed by sixteen States.[15] While it will not formally enter into force until it has been ratified by all the Contracting Parties, some of its provisions are already applied in practice insofar as the current text of the Charter allows, according to an appeal launched in the Final Resolution of the Turin Ministerial Conference and to a decision of the Committee of Ministers of December 1991. This will, it is expected, lead to a more effective control of the application of the Charter. It is also hoped that the Amending Protocol will be ratified as soon as possible by all the Contracting Parties.

The Committee on the European Social Charter has continued its work, leading, *inter alia*, to a draft protocol providing for a system of collective complaints which will be examined shortly by the Committee of Ministers. This system, if adopted, would provide workers' and employers' organisations, as well as certain national and international NGOs, with the right to complain that a Contracting Party was not fulfilling its obligations under the Charter and, besides providing a secondary form of control, would give more publicity to the Charter generally.

At the same time, the Committee has begun an examination of proposals for the improvement of the substantive content of the European Social Charter now considered to be somewhat out of date, compared to the evolution of society in general, and of social policy in particular, since the Charter was drafted.

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3. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[16]

This Convention has its origin in Article 3 of the European Convention on Human Rights, which provides that:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Since the Second World War, a considerable number of international instruments have been adopted which formally prohibit torture and inhuman or degrading treatment or punishment. However, for the most part these instruments lack machinery capable of effectively enforcing

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[15] Austria, Belgium, Cyprus, Finland, France, Greece, Hungary, Italy, Luxembourg, Malta, the Netherlands, Norway (without reservation as to ratification), Portugal (which ratified 8 March 1993), Spain, Sweden (which ratified 18 March 1992) and the United Kingdom.

[16] The Convention was opened for signature on 26 November 1987, and entered into force on 1 February 1989. To date it has been ratified by 23 States: Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Norway, the Netherlands, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

compliance with the obligations they create; even where such machinery exists, the control exercised tends to be of a post facto nature. Under these circumstances, attention has increasingly been focused on methods of a preventive nature, capable of attacking the phenomenon of torture at its roots.

The European Convention for the prevention of torture places a proactive, non-judicial mechanism, based on visits, alongside the existing reactive, judicial mechanisms of the European Commission and the European Court of Human Rights. Whereas the primary function of the Commission and Court is to ascertain whether breaches of the European Convention on Human Rights have occurred, the task of the above-mentioned non judicial mechanism - the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) - is to prevent potential physical or mental abuse of persons deprived of their liberty. It has its eyes on the future rather than the past.

The CPT is made up of independent and impartial experts (one for each State having ratified the Convention). It has the power to visit places of detention of any kind (prisons, police stations, military barracks, mental hospitals, ...), to examine the treatment of detainees and, if necessary, to make recommendations to the State concerned with a view to strengthening the protection of such persons from ill-treatment.

At the heart of the Convention is the principle of *co-operation*, ie co-operation between the CPT and the competent national authorities. The Convention's aim is to assist States to strengthen the protection of detainees, not to condemn States. A corollary of the principle of co-operation is the strictly *confidential* character of the CPT's work. Publicity may occur against a State's will only if that State fails to co-operate with the Committee or refuses to make improvements following the Committee's recommendations. Of course, a State may also request that the CPT's findings be made public.

The CPT carries out *periodic* visits to all Contracting Parties. In addition, the Committee may organise such other visits "as appear to it to be required in the circumstances" - so-called "*ad-hoc*" visits. The CPT is obliged to notify the State concerned of its intention to carry out a visit. However, no stipulation is made as to the period of time which should elapse between the notification and the moment when the visit becomes effective. Exceptionally, a visit may take place immediately after the notification. Once the notification has been given, the CPT may *at any time* visit *any place* where persons are deprived of their liberty by a public authority.

Contracting Parties undertake to grant the CPT "unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction". Further, the Committee is entitled to interview detainees in private and more generally to communicate freely with any person whom it believes can supply relevant information.

After each visit, the CPT draws up a confidential report on the facts found and sets out any recommendations which it considers necessary. On the basis of that report, an *ongoing dialogue* is established with the State concerned.

By the end of 1993, the CPT will have carried out periodic visits to all the existing 23 Parties to the Convention. Further, it has to date made two ad hoc visits, on both occasions to Turkey. Although the Committee's reports are in principle confidential, many states have requested that the reports concerning them be published, often together with their comments in response. So far, the CPT reports on its visits to Austria, Denmark, Finland, France, Malta, Sweden, Switzerland and the United Kingdom have been made public. Moreover, on 15 December 1992 the CPT had resort to the exceptional competence granted to it by Article 10, paragraph 2, of the Convention and adopted a public statement on Turkey.[17]

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[17] *See* Appendix III for a list of countries visited by the CPT and of reports made public to date.

III. OTHER COUNCIL OF EUROPE ACTION IN THE FIELD OF HUMAN RIGHTS

1. Introduction

The Statute of the Council of Europe provides that the Organisation's purpose is not only the "maintenance" but also the "further realisation" of human rights and fundamental freedoms. Forward movement is inherent in the idea of human rights. New problems and issues previously given insufficient attention come to the surface: for example, AIDS and discrimination against those with the disease, the need to protect national minorities, gender issues. At the same time, sustained attention needs to be given to ensuring that the proclamation of fundamental rights is matched by ever more effective measures for ensuring that they are respected. A basic prerequisite for ensuring such respect is that information about human rights and human rights standards is freely available to both governmental institutions and the public in general. In each of these ways, the Council of Europe's role is continually being strengthened and the Organisation has embarked on a number of activities in a variety of directions aimed at the development and promotion of human rights.

(a) The development of human rights

As demonstrated in the previous chapter, there has been a strong dynamism about the case-law of the control organs of the human rights treaties, particularly in recent years. As it has developed, it has considerably reinforced the contractual obligations of the States and even, in a sense, broadened the scope of both the European Convention on Human Rights and the European Social Charter which, as the Court, Commission and Committee of Independent Experts have several times observed, must be interpreted in the light of current living conditions. It is expected that the participation of more States from Central and Eastern Europe in these mechanisms will further enhance this dynamic process.

At the same time the States themselves have, on several occasions, decided to supplement the rights embodied in the existing treaties by means of additional protocols. In respect of the European Convention on Human Rights, this was done in 1952, 1963, 1983 and 1984. More than 15 rights and freedoms have thereby been added to the original text - not least of which is that covered by Protocol No. 6 of 1983, the first international agreement abolishing the death penalty. Currently, a further additional Protocol dealing with respect for the human rights of persons deprived of their liberty is being drafted. Four additional rights - including the right to equal opportunities and equal treatment of women and men in matters of employment and occupation, and the right of elderly persons to social protection - were added to the European Social Charter in a protocol of 1988.

Still other, new and difficult issues have arisen, to which the Council of Europe has striven to find an appropriate response. For example, Recommendation No R (89) 14 of the Committee of Ministers to member States on the *ethical issues of HIV infection* in the health care and social settings contains important elements in regard to discrimination against persons so

infected. In October 1992, the Council of Europe commissioned a study focusing on the major problems in this area and bringing out convergences and divergences between legislation in the different countries of Europe. The report is soon to be considered by human rights experts from the member States with a view to further work on the issue.

Other serious challenges confronting Europe as the century draws to a close concern the inequities between the situation of one human being and another in various aspects of daily life. The Council has therefore been devoting increasing time and effort to the search for *effective equality* to combat all forms of discrimination. Related questions were considered in depth at the 7th international colloquy on the European Convention on Human Rights (1990), where the theme of "Equality and non-discrimination" included discussions on: poverty and social exclusion; discrimination on grounds of health, particularly against persons with AIDS; ethnic minorities and racial discrimination.

As standard-setting activities have, however, relatively speaking, lessened in recent years, the Council of Europe has placed more and more emphasis on the *prevention of human rights violations* as well as the *effective implementation* of human rights standards at the national level.

Preventive, generally non-judicial, measures must be found to supplement the judicial machinery of the European Convention on Human Rights which, more often than not, can intervene only after a violation has occurred. The idea behind the drafting of the 1987 European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the establishment of its supervisory Committee, with its system of on-site visits, was indeed to seek to *prevent* physical and mental abuse of persons deprived of their liberty from happening.

Other efforts have focused on, for example, the *institution of the Ombudsman*. In its Recommendation No. R(85) 13, the Committee of Ministers called on Governments of the member States to consider the possibility of appointing Ombudsmen at the national, regional or local level or for specific areas of public administration and to give them particular responsibility and authority for human rights matters.

Equally, human rights information and human rights awareness are accorded priority in the context of programmes aimed at preventing future violations of human rights (see further, below).

The Council of Europe has always recognised the subsidiary nature of its recourse procedures and, having defined the basic human rights standards, has given increasing attention to the effective implementation of these standards at the national level. One very recent specific area of focus has been *effective access to justice for the very poor*. In January 1993, concerned at the situation of persons particularly deprived, marginalised or excluded from society in social and cultural, as well as economic terms, the Committee of Ministers adopted Recommendation No. R (93) 1, which set forth a number of steps that governments of the member States could take to facilitate effective access to the law as well as to quasi-judicial methods of conflict resolution.

Generally speaking, the concern constantly to develop the protection of human rights is reflected in numerous activities of the Council of Europe in a wide range of fields. Examples of efforts in progress in other areas - equality between women and men; the protection of national minorities; efforts to combat racism, intolerance and xenophobia - are dealt with in the pages that follow.

(b) The Promotion of Human Rights

The Council of Europe very quickly realised that all its work on human rights could well be to no avail unless it was accompanied by a simultaneous, resolute effort in the fields of education and information. The Organisation's activities in this field are long-standing but have been specially reinforced in recent years.

Human rights information

Developments in Central and Eastern Europe have highlighted the fundamental role which the Council of Europe must play in order to meet the pressing need for information and documentation, in particular, on the case-law of the organs of the European Convention on Human Rights and the European Social Charter. Many of these new democracies have embarked on a complete overhaul of their legislation and practice in order to bring them into line with democratic principles. At the same time, there is a growing demand for information in the member States themselves, whether from judges, teachers, lawyers or the general public.

Much of the information and education activities relating to human rights are handled by the Human Rights Information Centre of the Council of Europe under the guidance of the Orientation Committee of the Human Rights Information Centre which, as a cross-sectorial Committee of Experts, brings together the very important work undertaken by other sectors within the Council of Europe, in particular the work of the Directorate of Education, Culture and Sport. The Centre maintains computerised data bases on human rights, including the case-law of the treaty bodies, and provides an information service to governments, judicial authorities, academics, specialised institutions and the public at large. Increasing emphasis has been placed on the Council of Europe's role in the establishment and maintenance of centres specialising in human rights in the various member States, as well as, more recently, European non-member States. In certain cases, this may also involve financial grants to institutions active in the human rights field. A further immediate priority for the Information Centre is the establishment in all the countries of Europe of a network of "national correspondents" who assist the work of the Council by compiling and sending information on national legislation to the Centre.

A range of traditional activities are pursued in order to promote public awareness of human rights throughout Europe: preparation of general publications, including audio-visual materials; information campaigns; and award of a European Human Rights Prize every three years. Information meetings on human rights are organised every year by the Secretariat in different member States, upon request, and are attended largely by lawyers, judges and

academics. Additionally, the Council of Europe has for many years organised high-level colloquies, round tables and seminars on a range of human rights issues. These generally involve the participation of both government experts and members of the judiciary, as well as non-governmental experts: teachers, lawyers, representatives from non-governmental organisations, trade unions, etc., in both member and European non-member States.

A number of important publications for human rights education have been prepared - most recently, the *Short Guide to the European Convention on Human Rights*, *Human Rights in International Law: Basic Texts* and the *Human Rights Album* (for adolescents). Translations of some of the most important human rights texts and publications have now also been arranged in the languages of Central and Eastern Europe. By the end of 1992, over 20 human rights libraries were provided for the countries of Central and Eastern Europe, where lawyers, academics and the general public can have access to these materials.

Human rights training and education

The Council of Europe's approach to human rights training and education is multifaceted.

Traditionally, in addition to the production of relevant materials just mentioned, the Council of Europe has given priority to professional training in human rights, through information meetings allowing, chiefly, lawyers to develop a better understanding of the European Convention on Human Rights and the European Social Charter. Increasingly, the Council of Europe has responded to specific needs for training of key professional groups. Examples have included: the publication in 1984 of handbooks for police officers and prison officials; the organisation in 1990 of a seminar on human rights education in the training of police officers; and the convening in October 1992 of a training forum for Directors of Prison Administrations and Prison Governors in Central and Eastern Europe. Also in 1992 an exchange programme was set in motion, whereby 20 Turkish police officials spent periods of up to one month in different member States of the Council of Europe, gaining practical experience of arrest and detention procedures in those countries.

In the area of higher education, a number of fellowships are awarded each year to persons wishing to undertake a study or research project in the field of human rights. The number awarded in 1991 was 28; this had risen to 43 in 1992.

But the Council of Europe has also taken a more general and comprehensive approach to human rights education which embraces education for democratic participation, education for tolerance and intercultural learning. In the 1981 Declaration regarding intolerance (see section 3, below), the Committee of Ministers decided in particular "to promote an awareness of the requirements of human rights and the ensuing responsibilities in a democratic society, and to this end, in addition to human rights education, to encourage the creation, in schools, from the primary level upwards, of a climate of active understanding of and respect for the qualities and culture of others". In this spirit, the Council of Europe has promoted educational measures to combat resurgent intolerance not only among key professional groups such as the police and

prison officials, immigration officers and social workers, but also in schools and higher education establishments.

More details on this programme can be found in section 7, below.

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2. Equality between Women and Men

Unlike other international instruments relating to human rights - and particularly those constituting the International Bill of Human Rights - the European Convention on Human Rights (1950) does not include equality between women and men as a general principle. It simply, in Article 14, prohibits any "distinction" based, *inter alia*, on grounds of sex, with regard to enjoyment of the fundamental rights and liberties which it sets forth. Case law has determined that a distinction is discriminatory if there is no objective and reasonable justification for it or, in other words, if it is not made in pursuit of a legitimate aim or if the means employed are disproportionate to the aim.

The fact that the rights and liberties guaranteed by the European Convention are subject to the jurisdiction of the courts probably explains the low profile adopted by the drafters of this instrument, at a time when European society was not yet ready to accept that equal treatment in all fields be accorded in law to women and men.

Nevertheless, in the context of its twofold mission of defending and safeguarding human rights, on the one hand, and strengthening democracy, on the other, the Council of Europe has been led, over the years, and particularly under the impetus of the United Nations Decade for Women (1975-1985), to examine the problem of *de jure* and *de facto* inequalities between the sexes in its member States, with the aim of helping them to eliminate these inequalities and thereby promote equality.

The Council of Europe's work for equality - initially (that is until 1979) carried out on an ad hoc basis - has been aimed mainly at improving women's legal status and employment situation.

Some specific rights for women, namely equal remuneration of male and female workers, protection of mothers and working women and social and economic protection of women and children, were included in the European Social Charter (1961). The Committee of Ministers adopted several Resolutions[18] issuing recommendations to the member States over this period, and some of these completed or amplified the provisions in the European Social Charter.

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[18] *See* Appendix IV for bibliographical references.

In 1979, on the eve of the UN Conference midway through the Decade for Women (Copenhagen, 1980), the Council of Europe took the decision to tackle the question of equality between women and men in a comprehensive way. It made equality a guiding principle of its intergovernmental work and set up a **Committee of experts** to carry out and encourage activities aimed at promoting equality.

These activities, set out in an *Action Plan for the Promotion of Equality between Women and Men*, were carried out in various fields of the Organisation's work and led to studies, seminars and colloquies designed to explore specific aspects of the subject and, of course, to recommendations to member States laying down guidelines and means for the promotion of equality in specific fields.[19] The main issues studied were the situation of women in politics, equality in education and violence against women.

Where fundamental rights are concerned, the principle of equality between spouses with regard to rights and responsibilities in marriage was included in Protocol No. 7 to the European Convention on Human Rights, opened for signature in November 1984.

The omissions in the original wording of the European Social Charter, particularly with respect to the standards of the International Labour Organisation concerning the equal treatment in general and equal opportunities and treatment for workers of both sexes with family responsibilities, were partially remedied through an additional Protocol, opened for signature in 1988. This Protocol includes the right to equal opportunities and treatment with regard to employment and careers, without discrimination based on sex.

1988 marked a turning point in the Organisation's approach to the question of equality. On 16 November of that year, the Committee of Ministers, on the basis of a proposal put forward by the European Committee for Equality between Women and Men (CEEG), adopted a Declaration on equality of women and men in which it stressed that "equality of women and men is a principle of human rights, upheld as a fundamental right in many international instruments" and that "sex-related discrimination in the political, economic, social, educational, cultural and any other fields constitutes impediments to the recognition, enjoyment and exercise of human rights and fundamental freedoms". The member States also affirmed their resolve and undertaking to "promote awareness of the imperatives of democracy and human rights in respect of equality of women and men".

The work undertaken by the Organisation in order to promote effective (*de jure* and *de facto*) equality was consolidated and taken a step further on the basis of new proposals from the European Committee for Equality between Women and Men.

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[19] *See* Appendix IV.

In line with the Declaration of the Committee of Ministers, the question of equality between women and men was, from then on, included in the Council of Europe's field of activities on human rights.

The rooting of equality in the Organisation's field of excellence and the refocusing of the Organisation's activities concerning equality around a major project "equality between women and men" not only contributed to giving a higher profile to the issue but also made its legitimacy more evident.

The objective of this project, which marks what should be a decisive stage in the achievement of genuine equality between women and men in the Council of Europe member States, is to continue the work which has already been undertaken on establishing parity between the two, masculine and feminine, expressions of humanity, by encouraging both a change in attitudes and behaviour and an adjustment of the democratic organisation of politics and social structures, not least during the transitional phase which the countries of Central and Eastern Europe are currently experiencing. It is aimed at encouraging all citizens, male and female, to recognise equality between women and men as a condition for and essential component of democracy at all levels, at promoting the equal participation of women and men in politics and public life and at fostering specific actions to resolve situations where women's dignity is subject to attack and to particularly flagrant violations (in particular, sexual violence, trafficking and forced prostitution).

It should be noted, in particular, that in the context of this project the Council of Europe, conscious of its mission with regard to the furthering of the rights of human beings and taking account of the changes which have occurred in the member States with regard to equality between women and men, is considering including the fundamental right of women and men to equality in a Protocol to the European Convention on Human Rights.

If this move were successful, it would counteract, at the European regional level, the increasingly criticised inadequacies[20] of the guarantees accorded to women on the basis of the existing instruments with respect to the enjoyment of fundamental human rights.

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3. Efforts to combat intolerance, racism and xenophobia

Europe today, like other regions of the world, is witnessing a disquieting resurgence of nationalism, ethnocentricity, xenophobia and racism. These phenomena are particularly apparent

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[20] *See*, in this regard, the contribution of the Chair of the CDEG, Ms Regina Tavares Da Silva (Portugal) entitled "Human rights and gender" at the interregional meeting "Human Rights at the Dawn of the 21st Century" organised by the Council of Europe in advance of the World Conference on Human Rights (Strasbourg, 28-30 January, 1993) (Background document No. 1 CE/CMDH).

in the post-communist countries of Central and Eastern Europe, where they go beyond what might be regarded as the adolescent crises of peoples newly liberated, or as a beneficient rediscovery of their own identity by the people and nations of these countries. But they are not limited to those countries and the real and perceived migration of peoples, as well as the economic crisis in other parts of Europe, have increased the level of racism, xenophobia and violence in the well-established democracies. The Council of Europe will be redoubling its efforts in the coming years to devise measures to counter such phenomena.

In 1981, the Committee of Ministers adopted a "Declaration regarding intolerance - a threat to democracy", in which it decided to reinforce efforts, at national and international levels, and particularly in the framework of the Council of Europe, to prevent the spread of totalitarian and racist ideologies, and to act effectively against all forms of intolerance. Particular emphasis was placed on human rights education and encouraging the creation in schools of a climate of understanding and respect for the qualities and cultures of others. This emphasis on educational approaches has continued.

Several major conferences were convened in the last several years to review the situation and prompt further initiatives. Among the more recent, was a major seminar organised in Klagenfurt, Austria, in October 1991, on "Intercultural Learning for Human Rights" whose principal purpose was to take stock of the difficulties encountered by European member and non-member countries of the Council of Europe in view of mounting ethnocentricity, nationalistic, xenophobic and racist feelings, and to identify, in this regard, concrete and innovatory solutions. Discussion centred around two main themes: "Intercultural learning as a tool for combating ethnocentricity, xenophobia and racism" and "Intercultural learning as a tool for living together in a democracy based on respect for human rights." A second seminar was convened in March 1993 to ensure practical follow-up to the first meeting. Several specific projects, in the realms of the media and education, were proposed and considered.

Other specific activities undertaken in the realm of education and culture to combat intolerance, racism and xenophobia, are discussed below in section 7.

Given the importance and increasing urgency attached to finding collective strategies to promote tolerance and respect for pluralism throughout Europe, this issue will be high on the agenda of the Summit Meeting of all Council of Europe heads of State and Government to be held in October 1993 in Vienna. It is expected that the Summit Meeting will produce a text and programme for future action to combat these repugnant phenomena.

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4. Protection of the rights of persons belonging to minorities

The issue of protecting members of minorities, and in particular national minorities, is one of the most serious and pressing in Europe today. Ethnic and racial tensions are resurfacing, often in acute form and even as armed conflict. They represent a threat to Europe's overall

stability and thus to the unification and democratisation of European states, whether or not members of the Council of Europe. Given its purpose and geographical spread, the Council of Europe has a duty to help find solutions to this type of conflict which are consistent with human rights and the principles of pluralist democracy, while taking into account the decisions and initiatives of other international organisations.

The basis for the protection of minorities is of course political in nature and involves building and maintaining a climate of trust between various sectors of the community, But this also requires underpinning by law, both on the national and international level. The Council of Europe has been taking both approaches to this difficult issue, with initiatives that cut across its many sectors of activity.

The Parliamentary Assembly, in its Recommendations 1134 (1990), 1177 (1992) and 1201 (1993), has advocated both political solutions - a monitoring agency, conflict-prevention machinery and a conciliation body, and a legal approach in the form of an additional protocol to the European Convention on Human Rights covering the rights of national minorities (Recommendation 1201 of 1993).

In May 1992 the Committee of Ministers adopted Recommendation R (92) 10 asking member States to honour all existing legal obligations and commitments towards national minorities. At the same time, it mandated the Council's Steering Committee for Human Rights (CDDH) to propose, in time for the Council of Europe's first Summit of Heads of State and Government (Vienna, 8-9 October, 1993), specific legal standards for the protection of national minorities, giving due attention to the work already done by the CSCE and the United Nations in this area, and to the draft Convention on the subject prepared by the European Commission for Democracy through Law and the Austrian proposal for an additional protocol to the European Convention as well as the draft protocol proposed by the Parliamentary Assembly.

Earlier consideration was given to a form of machinery, open to all European countries, that might help avert or solve minority problems by establishing facts and carrying out consultation, mediation and conciliation. Following the establishment by the CSCE of a High Commissioner for national minorities, the Council of Europe will be working closely with the High Commissioner in the carrying out of his functions.

As mentioned earlier, special attention is given by the Council of Europe to *confidence-building measures* to promote mutual understanding, tolerance and trust between sections of the population. The Committee of Ministers has recognised the value of pragmatic action of this kind, designed to build or strengthen a climate of trust, more particularly in regions of potential conflict.

In 1992 the Council of Europe Secretariat began to grant its help to some initiatives, submitted either by member States or by public or private institutions in these countries. These measures are practical and carefully targeted, and aim to serve as examples and to be implemented in partnership with local agencies. Of a kind that can be put into effect quickly,

they take the form of pilot schemes conducted on the ground, dealing with problems selected for specific reasons, and based on participation of those immediately concerned. The approach is pragmatic and interdisciplinary, since the minorities issue simultaneously has to do with day-to-day living, community relations, the economic and political contexts, the local and regional levels and the legal and institutional frameworks. The Intercultural Information Centre at Timisoara in Romania and the independent radio station, *Radio Rijeka Fiume International*, in Croatia, are two concrete examples of the kinds of projects involved. It is envisaged that similar projects will be implemented elsewhere in the coming years.

Finally, a European Charter for Regional or Minority Languages, instigated by the Standing Conference on Local and Regional Authorities of Europe, was adopted in June 1992 and opened for signature by member States on 5 November 1992. The Charter, which will come into force upon ratification by five member States,[21] recognises that the right to use a regional or minority language in private and public life is an inalienable right and that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity.

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5. Activities in the social field

The changes that have been affecting Europe in recent years have made exceptional demands on the work of the Council of Europe in social and economic affairs, in particular, social policy, social security, employment, demography and migration. It is the Council's primary task to ensure that the principles embodied in the European Convention on Human Rights and the European Social Charter are integrated into the work of governments in all these fields. The Council is committed by its Statute to pursuing these objectives by "discussion, agreements and common action."

The work on *migration* assumes a particular importance. The Council has, through discussion and agreements, helped to facilitate the international mobility of workers and their families, their integration in the host countries without loss of cultural identity and their legal and social protection on an equal footing with nationals. This work has been complemented by the gradual raising of the level of social protection thanks to the European Social Charter (see, *supra*, Chapter II.2), social security instruments and the political guidelines agreed on by the European Conferences of ministers of labour, social security, family affairs and migration.

At a time when the Organisation continues to expand, opportunities for co-operation and dialogue are opening up for all States of the continent, and instruments such as the European

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[21] As at 1 May 1993, Austria, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Spain and Cyprus have signed the Charter.

Social Charter, the Convention on the Legal Status of Migrant Workers, the revised European Code of Social Security, a number of interim agreements, the Convention on Social Security and the Convention on Social and Medical Assistance are acquiring new significance as standards for numerous countries.

The *European Code of Social Security* (in force since 1968) is the only instrument defining European norms for social security coverage. Establishing minimum levels of protection in nine branches of social security, the Code is flexible in its application. An international control system involves the examination by supervision bodies of yearly reports submitted to them by the Contracting Parties.[22] Additionally, every two years States parties are obliged to submit a report on developments in their laws and administrative practices in those areas of protection to which they have not yet accepted to be bound by the Code. A study of the resolutions of the Committee of Ministers on the application of the Code and Protocol shows that many States have adapted their national legislation in order to meet the requirements of these instruments, even after ratification. Like other existing instruments, the Code has been revised in order to keep up with changing conditions in demographics, in family life and in the labour market. This process of revision resulted in a new instrument, the European Code of Social Security (revised), which was opened for signature on 6 November 1990.

The *European Convention on Social Security and the Supplementary Agreement* for its application (in force since 1977)[23] are designed to provide for the international co-ordination of social security systems. They allow people who move within Europe, and particularly migrant workers and their families, to continue to enjoy social security protection on an equal footing with the nationals of the host country without losing the rights acquired by them in their country of origin. The Convention lays down as a general rule (with few exceptions) that the legislation applicable is that of the Contracting Party on whose territory the occupational activity is exercised. The Convention does not affect any obligations arising under ILO conventions, nor the provisions on social security in the Treaty establishing the EEC or agreements concluded thereunder.

The Committee of Ministers has given serious attention to different problems in this field and has made recommendations covering: the protection of unmarried mothers and their children, social security for women at home, home help services, protection of children against ill-treatment, marriage guidance and family counselling services, universal provision of medical care, flexible retirement age, and violence within the family. Special attention should be drawn to the Ministers' Recommendation No. (91) 2 on social security for unregistered workers, which calls on governments to promote the progressive adoption of measures to ensure that such persons --

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[22] The Code has been ratified by 16 member States: Belgium, Cyprus, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey, United Kingdom.

[23] As of 1 May 1993, the Convention and Supplementary Agreement had been ratified by eight States: Austria, Belgium, Italy, Luxembourg, Netherlands, Portugal, Spain and Turkey.

helpers, persons at home with family responsibilities and voluntary workers -- are accorded social security protection, hitherto unavailable to them.

The *European Convention on the Legal Status of Migrant Workers* came into force on 1 May 1983. It is designed to complete the protection granted to migrants under the European Social Charter and is based on the principle of equality of treatment between migrants and nationals of the host country. Its provisions cover essential aspects of the legal situation of migrant workers, notably recruitment, work and residence permits, family reunification, housing, working conditions and trade union rights, transfer of savings, social security and the return of migrants to the country of origins.

An international consultative committee, composed of representatives of the States parties to the Convention, monitors the application of this instrument and may submit proposals for improvements to the Committee of Ministers. Unfortunately, ten years after the Convention came into force, it has still only been ratified by seven member States: France, Netherlands, Norway, Portugal, Spain, Sweden and Turkey.

Meanwhile, consideration is being given to an additional protocol to the Convention which would be applicable to temporary migrants (seasonal workers, seconded and project workers) who are presently excluded.

The Committee of Ministers has adopted numerous resolutions over the years on the situation of migrant workers and their families, recommending action by member States in the areas of working conditions, vocational guidance and training, reunification of families and provision of housing.

The work of the Council of Europe in the health field has been characterised by a desire to humanise and democratise the health services. Ethics in health care is a major preoccupation. Blood transfusion and transplantation programmes are aimed at ensuring the principle of non-commercialisation of blood and organs and ensuring an equitable, quality service. In health education, the Council is leading preventive action aimed at directing young people towards free, responsible choices about their life styles. Faced with the tragic spread of AIDS, the Parliamentary Assembly and the Committee of Ministers have taken a firm position on the principles to be respected in order to ensure the fundamental rights of individuals (see also earlier, section II.1(a)). The protection of human freedom and dignity is an important part of all these activities.

A final aspect of the work in this field that bears special mention is the innovative approach adopted in Recommendation No. R (92) 6 by the Committee of Ministers in April 1992, concerning the rehabilitation of *persons with disabilities*. The text of this recommendation represents a genuine framework law or charter, defining a coherent and comprehensive policy of rehabilitation and integration of disabled persons. Concrete measures are proposed in the areas of: prevention and health education, identification and diagnosis, treatment and diagnosis, education, vocational guidance and training, employment, social integration and environment,

social, economic and legal protection, training of persons involved in the rehabilitation process and the social integration of people with disabilities, information statistics and research.

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6. Activities in the media field

Article 10 of the European Convention on Human Rights provides the backdrop to all of the activities within the Council of Europe in the area of the mass media. However, the freedom which is guaranteed by the jurisdictional activities of the European Court and the European Commission of Human Rights is essentially an individualistic freedom which is accorded to all irrespective of situations of social inequality. Moreover, the wording of Article 10 of the European Convention, which reflects to a great extent similar provisions laid down in other international and regional human rights instruments, is primarily concerned with ensuring that public powers do not interfere with the exercise of the freedom of expression and information. It does not provide positive encouragement to States to create the necessary conditions for the effective exercise of freedom of expression and freedom of information within societies. Nor is it capable of addressing the interferences with the exercise of these rights by private powers. Policy-making initiatives are also required so as to complement the action of the judicial organs in ensuring the enjoyment of these basic freedoms free from interference on the part of public powers.

The policy-making activities of the Council of Europe in the area of the mass media are geared towards strengthening and enhancing the freedom of expression and information and the right to receive and impart information and ideas regardless of frontiers. A major contribution to this goal was made on 29 April 1982 by the adoption of the Committee of Ministers of the Declaration on Freedom of Expression and Information. This political text was intended to encourage the governments of the member States to take a more interventionist, more dynamic, approach to information and communication within their respective countries.

Pursuit of these objectives is conditioned by the specific features of the European context, which include:

- adherence by all member States of the Council of Europe to the cardinal value laid down in Article 10 of the European Convention on Human Rights;

- a highly industrialised region characterised by the play of market forces, and oriented towards the introduction and development of technology in the media sector;

- an attachment to a European cultural identity, while at the same time seeking to preserve the richness of national cultural identities;

- an increasing number of countries within the wider European continent seeking to embrace the values of human rights, including the freedom of expression and information, and to accede to the Statute of the Council of Europe.

The market economies of the member States are organised in such a way as to promote competition between media undertakings, in both the written press and broadcasting sectors. The Council of Europe is particularly attentive to the possible negative effects which unbridled competition fuelled by deregulatory policies may have on the media landscape. In particular, attention is being accorded to the negative effects of media concentrations on media diversity and pluralism which are guarantees of effective freedom of expression and information. The media concentration phenomenon is symptomatic of the new media economics which characterise the operation of the European media markets at the end of the 20th century. Reflection has now been engaged on the ways in which pluralism can be defended and promoted in the light of the changed economic circumstances. The policies which will be elaborated within the Council of Europe on this particular subject will be intended to ensure that aggressive economic behaviour on the part of strong media undertakings does not diminish the existence of a plurality of independent and autonomous media outlets reflecting a diversity of views, opinions and cultures. It is precisely this sort of policy initiative which is required to complement the negative formulation of freedom of expression and information laid down in Article 10 of the European Convention on Human Rights. Moreover, it is worth noting that the approach is directed against private power and the impact which its exercise may have in curtailing the outlets for expressing and receiving information and ideas.

More generally, the Council of Europe has also sought to address the overall audio-visual landscape from the perspective of the new developments introduced as a result of economic, technological and political change. It is currently seeking to define the role of public service broadcasting against the background of the new commercial forces which are now operating in the broadcasting sector. There is a profound belief in the need to ensure the preservation and promotion of public service broadcasting free from commercial and political constraints, dedicated to providing a comprehensive nationwide service which is responsive to a plurality of different views and interests, including those of minority groups. Once again, the key concern is to ensure proper information flow at the service of the public, rather than a communications process which is exclusively conditioned by commercial imperatives. At the same time, the whole area of journalism has been put under scrutiny with a view to ensuring that the exercise of the profession, which is based on the fundamental right of free expression and information, can be defended in terms of human rights. Once again, the analysis is to be viewed against, inter alia, the background of commercial threats to the ethics of the profession and the corresponding political pressures to interfere in journalistic freedom in the name of reinstating responsible practices and behaviour.

Technological advances go hand in hand with economic change. The media in Europe have shown their willingness to embrace technology and to exploit the new techniques which make it possible to deliver programme services across frontiers and within national territories. The work of the Council of Europe has sought to be technologically relevant and, at the same

time, attentive to the need to ensure that technology does not develop in the absence of a framework of principles respectful of the value of freedom of expression and information. The elaboration of the European Convention on Transfrontier Television is a signal example of this approach. While this important instrument is firmly rooted in the values enshrined in Article 10 of the European Convention on Human Rights, its significance is to be found in the fact that it seeks to concretise Article 10 in the specific context of transfrontier television. It guarantees freedom of reception and retransmission in a new context which was not in the minds of the drafters of the European Convention on Human Rights. At the same time, it seeks to provide a corpus of basic principles guaranteeing respect for vulnerable interests, and conditions the use of advertising and sponsorship in programme services in a way which would not be possible through the play of market forces alone.

The developments at the technological and economic levels affecting the media landscape are also addressed from the perspective of the new problems which arise for the protection of intellectual property rights. The Council of Europe has sought to ensure, through its many policy initiatives, that those who are at the basis of artistic creation are not prejudiced as a result of developments in the audio-visual sector. In this regard, it is essential to regard copyright and neighbouring right holders as essential actors in the communication and information process, providing societies with particular perspectives on various issues, making the public reflect or simply providing forms of entertainment or distraction. The latter activities, it should be recalled, are also part of the freedom to communicate and receive ideas and information and, as such, influenced by technological and economic changes.

As noted previously, the work in the media field is situated against the background of the need to promote a European cultural identity, while at the same time ensuring the preservation (and promotion) of national cultural identities, both at the local and regional levels. The concern of the Council of Europe to promote cultural pluralism through its activities in areas such as media concentrations reflects this particular objective. The value of the electronic media in promoting mutual understanding between peoples, and enrichment through the free flow of information across frontiers, was a primary motivation in the elaboration of the European Convention on transfrontier television. By guaranteeing freedom of reception and retransmission of programme services in the transfrontier context, the Convention allows people to acquire a greater understanding of the diversity of Europe's cultural heritage. This need to reinforce the European cultural identity may also be illustrated by the specific projects of the organisation in the development of a European audio-visual area. Here, the Council of Europe has emphasised the need for European producers and broadcasters to create and publish high-quality audio-visual works which are firmly located in the European tradition. These specific initiatives may be viewed as a complement to the provisions in the European Convention on Transfrontier Television which encourage broadcasters to reserve a majority share of their broadcasting schedules to the screening of European originated audio-visual works. At the same time, these activities are mindful of the imbalances which exist in the audio-visual landscape in the European countries. It has been recognised that particular attention must be accorded to the plight of the small countries living in the shadow of the giants. With this in mind, particular projects have been launched to take account of the specific requirements of the smaller European countries so

as to avoid consigning them to a cultural backwater. This is a novel but essential view of the freedom of expression and information, geared towards the creation of possibilities for smaller countries to communicate their cultures embodied in their audio-visual works to wider populations.

Finally, the Council of Europe has taken a particular interest in the developments in the Central and East-European countries and has expended enormous efforts in helping those countries to move towards respect for human rights, the rule of law and democratic principles. In the context of the mass media, efforts have been deployed to ensure that these countries introduce independent and pluralistic media systems, building on the values laid down in Article 10 of the European Convention on Human Rights.

The work of the Council of Europe in the area of the mass media proceeds at the intergovernmental level. As with the other intergovernmental activities within the Organisation's remit, attempts are made to define harmonised policy responses to specific problems. In the final analysis, acceptance of the norms worked out within the Organisation depends on the political will of the governments of the member States. There is no supernationally imposed solution. The intergovernmental nature of the Organisation thus limits, to some extent, the scope of the initiatives which can be undertaken as well as the extent to which the initiatives elaborated are followed up in domestic law and practice. Moreover, the mass media is an area characterised by the underlying value of freedom of expression which denotes the absence of interference on the part of governments in their activities. Regulatory measures are viewed with suspicion by the professionals and are met with resistance as a disguised form of unnecessary interference with their basic rights and freedoms. The scope for initiatives to be undertaken by the Council of Europe in the area of the mass media must therefore be evaluated in the light of the latter constraint. It is for this reason that the Council of Europe places great emphasis on the need to seek the views of the professional bodies in regard to its proposed activities in the media field, and ensures to the fullest extent possible that its policy proposals do not undermine editorial independence and autonomy but serve to promote freedom of expression and information.

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7. Activities in the field of education and culture

Throughout its work, the Council of Europe has placed emphasis on the importance of education and cultural institutions in promoting the basic aims of the Organisation. In this sense, education is understood to include not only a formal school education, but a continuing education for all people at all ages and at all levels of society. As Europe today confronts major threats to the foundations of its societies: the resurgence of nationalism; problems of minorities; growing intolerance, racism and xenophobia, hatred and violence; disaffection with the political process; social exclusion and marginalisation, etc., increasing efforts are being devoted to human rights education in the broader sense. Programmes are being developed and pursued as part of the

general efforts by the Council of Europe in the field of education, and the approach taken is essentially interdisciplinary.[24]

Three important texts have been developed by the European governments which currently guide the work of the Council in this area:

In earlier sections, reference has already been made to the 1981 *Declaration of the Committee of Ministers regarding intolerance - a threat to democracy*[25]. In this declaration, the Ministers stated their conviction that:

> "... the best way of countering all forms of intolerance is to preserve and consolidate democratic institutions, to foster citizens' confidence in those institutions and to encourage them to take an active part in their operation"

and affirmed:

> "... the vital part played by education and information in any action against intolerance, whose origin frequently lies in ignorance, source of incomprehension, hatred and even violence".

They thus decided:

> "to promote an awareness of the requirements of human rights and the ensuing responsibilities in a democratic society, and to this end, in addition to human rights education, to encourage the creation in schools, from the primary level upwards, of a climate of active understanding of and respect for the qualities and culture of others."

Three years later, the Committee of Ministers developed a series of recommendations to member States on the *training of teachers in education for intercultural understanding*, notably in a context of migration[26].

In 1985, reminding member States of the various commitments they had already made to human rights education over the years, the Committee of Ministers recommended that all their

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[24] *See* section III.1(b), for details of some of the training programmes undertaken in the field of human rights in relation to specific professional sectors - particularly the legal profession, the police, prison officials and journalists, as well as of some of the materials produced to promote education in human rights.

[25] adopted by the Committee of Ministers on 14 May 1981.

[26] Recommendation No. R (84) 18, adopted by the Committee of Ministers on 25 September 1984.

governments encourage *teaching and learning about human rights in schools* in line with a very detailed series of suggestions.[27]

The activities of the Council of Europe in pursuance of the above objectives are directed principally by the Council for Cultural Cooperation (CDCC), which includes not only the 26 member States of the Council, but also Albania, Croatia, Estonia, the Holy See, Latvia, Lithuania, Romania, Russia, the Slovak Republic and Slovenia. The two primary aims of their efforts are:

- to train young people and adults for life in a democratic society;

- to prepare them to live in a multicultural and interdependent Europe as part of a multicultural and interdependent world.

In pursuance of these aims, programmes have been developed, *inter alia*, with the following themes: (i) education in democratic values and human rights; (ii) improvements in the teaching of history and the production of history text books; (iii) a special project: "A secondary education for Europe (1991-1995)"; (iv) an intercultural approach to education, aimed at developing a recognition in all members of a society of the differences existing within the society; (v) the particular educational problems of gypsies and travellers; (vi) higher education (pursued also through the Standing Conference on University Problems and through the European Conference of Directors of Educational Research Institutions); (vii) adult education; (viii) education of the media; (ix) cultural rights and genuine democracy. In each of these areas, efforts have been aimed at promoting training, producing educational materials and supporting the projects of others.

Numerous seminars have been organised by the Council of Europe in the past years, on different aspects of education in democratic values and human rights. Bringing together government experts and education professionals from throughout Europe, these seminars have also provided the opportunity to continue the search for further solutions in this area to the problems currently confronting Europe.

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8. Activities in the legal field

Most aspects of the work of the Council of Europe in the promotion of democracy, human rights and the rule of law necessarily involve or otherwise fall within the legal field, domestically

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[27] Recommendation No. R (85) 7, adopted by the Committee of Ministers on 14 May 1985.

and internationally. There are, however, several specific areas of human rights protection in which legal co-operation, more narrowly defined, merits special attention.[28] These include:

(a) Crime problems

Protection of human rights is one of the objectives inspiring all past, present and future work of the European Committee on Crime Problems (CDPC), which is responsible for designing and implementing the Organisation's programmes in the field of criminal law and procedure, penology, criminology and policy in relation to crime.

Provisions of the 19 conventions and protocols, which together form the basis for European co-operation in criminal matters, reflect the aim of safeguarding the rights of persons accused of or sentenced for criminal offences, while at the same time assuring the efficient functioning of the criminal justice system. Similar concerns are reflected in the many resolutions and recommendations adopted by the Committee of Ministers for the harmonisation, as well as improvement, of criminal law and procedure in member States - among them, Resolution (65) 11 on remand in custody; Recommendation No. R (80) 11 on custody pending trial; and Recommendation No. R (87) 18 concerning the simplification of criminal justice.

In relation to the penal system, particular attention has been given to the safeguard of human rights in the context of custodial treatment. In the 1980s it was recognised that significant social trends and changes in regard to prison treatment and management had made it desirable to build further on the existing Standard Minimum Rules for the Treatment of Prisoners,[29] so as to support and encourage the best of these developments and to offer scope for future progress. Thus the (1987) European Prison Rules[30], were drawn up, with the specific aim of establishing "a range of minimum standards for all those aspects that are essential to human conditions and positive treatment in modern and progressive systems". These were intended to "serve as a stimulus to prison administration to develop policies and management style and practice based on good contemporary principles of purpose and equity". More recently, the CDPC has been working with the Steering Committee for Human Rights (see infra, section II.1.a) to transform certain of these Rules into "rights" of persons in detention in a further protocol to the European Convention on Human Rights.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (see earlier, section II.3) seeks to implement in addition to article

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[28] See also, for example, Chapter IV on Co-operation and Assistance Programmes to Countries of Central and Eastern Europe.

[29] Adopted by the Committee of Ministers in 1973 (Resolution 73 (5)), these Rules were drawn up with the intention of adapting the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners to meet the requirements of modern European penal policy.

[30] Recommendation No. R (87) 3, adopted by the Committee of Ministers on 12 February 1987.

3 of the European Convention on Human Rights and other relevant instruments, both the 1987 European Prison Rules and the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners in the course of its visits to places of detention.[31]

Various other resolutions and recommendations concerning, for example, the treatment of long term prisoners, of foreign prisoners, and of dangerous prisoners, have been adopted with the same twin aims of ensuring the efficient functioning of the penal system, while safeguarding the dignity and individual rights of those in detention. The Council of Europe organises regular conferences of directors of prison administrations which examine such topics.

Priority attention is also given to the promotion of measures presenting alternatives to imprisonment. Mindful of the fact that such measures can also give rise to abuses and violations of the rights of those sentenced (for example, their right to privacy), Rules were drawn up and adopted by the Committee of Ministers in 1992 for the "implementation of sanctions and measures in the community."[32]

In relation to crime problems in general, in addition to conferences on crime policy organised every five years, the Council of Europe regularly convenes criminological conferences and colloquies as well as committees of experts to examine problems such as crime prevention in general; the prevention of juvenile delinquency; victimisation; drug abuse and criminality; and the efficient functioning of the criminal justice system. All these subjects are now examined in the light of the opening of frontiers within Western Europe as well as democratisation of the countries in Central and Eastern Europe.

(b) Data protection

Technological advances and the generalised spread of electronic data processing have engendered active and extensive co-operation between member States of the Council of Europe in this field. Their implications for the protection of human rights have been the focus of attention for several years now.

Article 8 of the European Convention on Human Rights guarantees to all persons the right to respect for their private life, prohibiting any interference with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society for certain, clearly defined interests. In 1981, a *European Convention for the Protection of Individuals with regard to Automated Processing of Personal Data*[33] was drawn up, setting down generally agreed principles for the protection of personal data. The Convention has created a consultative

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[31] *See*, for example, the 1st General Report on the Activities of the CPT, CPT (91) 3, at paras 95 and 96.

[32] Recommendation No. R (92) 16, of the Committee of Ministers to member States on the European Rules on Community Sanctions and Measures, adopted on 19 October 1992.

[33] The Convention came into force on 1 October 1985. It has been ratified by 12 States.

committee to advise on all questions concerning the application of the Convention and to assist in its implementation.

While the Convention laid down general principles, the Committee of Ministers has over the years also adopted a series of recommendations to the Governments of member States offering detailed guidelines for ensuring respect in practice for these principles in the different sectors in which data are collected or handled. These include: medical databanks (1981); scientific and other statistical research (1983); direct marketing (1985); social security (1986); police records (1987); employment data (1989); financial payments and related transactions (1990); and communication of data to third persons by public institutions (1991). The Committee of Ministers is currently considering recommendations in relation to the protection of personal data in the field of telecommunications, in particular telephone services.

(c) Other aspects

Recent developments, in terms of both advanced technology and changing social patterns, have occasioned the need for further co-operation in (re-)defining and enhancing legal standards within Europe in several other areas. Among these can be mentioned:

Nationality: Greater opportunities to travel, the migration of numerous persons and the difficult political situation in certain countries have resulted in many persons living abroad and numerous marriages between persons of different nationalities. States are therefore receiving a growing number of requests for naturalisation and must decide which requests should be granted and whether naturalised persons should be allowed to retain their original nationalities.

Since the adoption 30 years ago of the Convention on reduction of cases of multiple nationality, many European States now favour a less restrictive approach towards multiple nationality. A committee composed of specialists from the member States of the Council of Europe is examining these problems. Its aim is to find practical solutions to the many difficulties which arise in this area and, in particular, in relation to the consequences of multiple nationality, including as this affects military obligations.

Bioethics: Medicine and biology have made tremendous progress during the last decades, bringing enormous benefits to the health and welfare of human beings. However, this progress may also bring with it certain risks. There is thus a need to control the progress of science in such a way as to ensure that it remains in the service of humanity. To this end, the Council of Europe organises Standing Conferences of National Ethics Committees and symposia on questions relating to bioethics. More specifically, the Organisation is currently preparing a convention on general principles relevant to the science of bioethics, with two related protocols specifically on organ transplantation and on medical research.

Environmental law: The Council of Europe has recognised the important role that law can play in the general plan of action for the protection of the environment, in terms of defining civil liability in cases of environmental damage and the provision of compensation. On 8 March

1993, the Committee of Ministers adopted a Convention on civil liability for damage resulting from activities dangerous to the environment. This Convention will be opened for signature in June 1993. During the second half of 1993, a committee of experts will start work on a compensation fund designed to complement the civil liability regime instituted by the Convention in cases where the latter would be difficult to apply.

Family law: Patterns of family life in many States continue rapidly to change, and the law has the difficult task of keeping pace with all these changes. Practical rules are necessary to regulate matters which concern us all at the different stages of our lives, and to deal with cases where problems arise (for example, in cases of divorce or disputes concerning children and property).

A Council of Europe committee is at present preparing a major draft convention on the exercise of children's rights. The aim of the convention is to assist European States in the implementation of the United Nations Convention on the Rights of the Child, in particular to ensure that children benefit from certain procedural measures and assistance in order to be able to enjoy those rights.

On 22 June 1993, an Informal Meeting of European Ministers of Justice will be held in Lugano, Italy, which will address the themes of *federalism*, *regionalism* and the *protection of minorities*.

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9. Genuine Democracy

The member States of the Council of Europe declare themselves in the Preamble to the Statute reaffirm their devotion to the values of a common heritage made up of principles complementing each other and thus deeply intertwined - principles which are said to "form the basis of all genuine democracy". Yet these principles need to be clarified, deepened and defined more concisely in a context from which all ideological parochialisms are banned.

The changed political situation in Europe has, in the view of the Council of Europe, entailed new obligations for the Organisation, demanding broad-based action to reassert and strengthen the essential principles of democracy, pluralism, rule of law and respect for human rights.

Pluralist parliamentary democracy is an essential part of the European heritage. This heritage, however, cannot be allowed to stagnate; it is the product of a constantly changing situation and can never be considered as truly completed or fully accomplished. The democratic reality of our societies is not something which we can take for granted; it is a constant challenge, a political project to be built and developed day by day in order to achieve new objectives.

Thus it was felt necessary for a renewed democratic tradition to be forged at the grass roots of society by encouraging citizens to assume their responsibilities in community life and for thought to be given to developing a fresh approach to democracy, one that is more demanding in terms of the realities of democratic living, and not simply confined to its formal aspects, which, while necessary, are insufficient.

These were the principal reasons for the preparation of a multidisciplinary research and priority action plan on *human rights and genuine democracy*, which will be implemented within the Council of Europe in the next few years.

The activities of the Council of Europe in this area concern all member States as well as European non-member States which have reinstated democratic institutions, yet are experiencing rejection, indifference and detachment on the part of their citizens vis-à-vis political life and participation in the functioning of institutions. Without neglecting the practice and contribution of the great extra-European democracies, as experienced in such fora as the CSCE, the action will be focused on:

(a) genuine democracy and the functioning of institutions: democratic institutions and how they work, parity democracy, local democracy;

(b) the individual and the State of law facing up to major challenges: the protection of minorities, the fight against social exclusion, the fight against intolerance, racism and xenophobia, foreigners' rights and issues related to immigration, asylum and political refugees, bio-ethics;

(c) education and culture in a democratic society;

(d) media in a democratic society.

Implementation of these activities should serve to deepen and consolidate the substance of the three complementary and indissociable principles which constitute the uniqueness of the Council of Europe's common heritage: respect for human rights, rule of law and genuinely democratic government.

Two related projects can be mentioned here:

First, the creation of democratic institutions at local and regional level is considered to be one of the main foundations of any democratic regime, and the right of citizens to participate in the conduct of public affairs a principle that is to be shared by all member States of the Council of Europe. The *European Charter of Local Autonomy* is designed to promote and ensure the application of this principle, establishing some common principles with regard to various aspects of decentralisation - including the need for States to elaborate legal provisions (preferably at a constitutional level) with respect to local autonomy.

The Charter was signed by the Committee of Ministers in June 1985 and opened for signature on 15 October 1985. Eighteen States have already ratified and are in the process of incorporating the Charter into their legislation.

Secondly, a *Convention on the Participation of Foreigners in Public Life at Local Level* whose aim is to grant progressively genuine civil and political rights to foreign residents in local communities, opened for signature in February 1992. The Convention provides three different categories of measures:

1. The "classical rights" of freedom of expression, assembly and association, including the right to form trade unions;

2. The creation of consultative bodies at local level: participation in an advisory capacity in the deliberations of local authority commissions; consultative councils made up exclusively of foreigners, etc;

3. The right to vote in local elections, after five years residence in the host country, and to stand for election.

In order to facilitate acceptance of the Convention by those countries which have constitutional impediments to granting voting rights to foreign residents, a step-by-step acceptance of certain provisions is foreseen.

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IV. THE CONTOURS OF A NEW EUROPEAN ARCHITECTURE

1. Co-operation and assistance programmes to countries of Central and Eastern Europe

Following the democratic revolutions which took place at the end of 1989 and in 1990 in virtually all the countries of Central and Eastern Europe, the Council of Europe provided itself with specific resources to strengthen and develop the democratic reforms in those countries by creating a special budget for contacts and co-operation with them.

The declared objective in the majority of Central and Eastern European States is full membership of the Council of Europe in the not-too-distant future. They regard this membership as a necessary stage in their "return to Europe" (see Appendix V). The conditions for the admission of a State to the Council of Europe, it will be recalled, are: the existence of a genuine *pluralistic democracy*, the *rule of law* and enjoyment by all persons within the jurisdiction of a State of *human rights and fundamental freedoms* (see Article 3 of the Statute of the Organisation.)

In 1990, the Council of Europe set up a specific programme of co-operation and assistance designed to share with the Central and Eastern European countries its achievements and experience in all aspects of the building of a democratic society. This programme is referred to as the *Demosthenes Programme*. Its objective is to strengthen the reform movement towards genuine democracy and to facilitate a smooth and progressive integration of these countries into the Council of Europe family and the institutions of European co-operation. In short, the aim of this programme is to put at the disposal of Central and Eastern European countries the expertise acquired by the Council and its member States in all aspects of the organisation and functioning of participative democracy. In this way, the national institutions and legislation of these countries will gradually be brought into conformity with European norms as reflected in conventions and other achievements of the Council of Europe.

Given the purpose of the Council of Europe, the focus of this inter-action more often than not is concentrated on co-operation and assistance in the human rights field, whether it be the question of bringing national systems of legislation, currently under reform, into line with the provisions and standards of the European Convention on Human Rights, or more general issues relating to initiatives in the legal and social field, promotion of specific projects relating to the media, equality between women and men or human rights education.

The various types of activities - which apply in principle to all fields - include:

- expert missions - i.e., the sending of experts from Council of Europe member States to assist the authorities in the Central and Eastern European countries with a particular legislative or administrative problem;

- organisation of seminars/round-tables with experts from member States in member countries or beneficiary countries;

- contributions (of finance and/or expertise) to initiatives undertaken in the beneficiary countries by various governmental and non-governmental institutions to promote better knowledge and training in the human rights field;

- study visits, namely, visits by senior officials, judges, lawyers and others from the beneficiary countries to member States;

- traineeships for senior ministerial officials, academics and lawyers from the beneficiary countries in the various human rights-related activities of the Council of Europe;

- promotion of better information and documentation through new publications, translations, setting-up of information centres, etc.;

- participation of governmental experts from Central and Eastern European countries in the Organisation's expert committees (subject to appropriate authorization by the Committee of Ministers); and

- participation of Central and Eastern European countries in numerous colloquies and conferences.

These programmes are carried out either as bilateral or multilateral projects.

During 1991 and 1992, co-operation and assistance programmes in the field of human rights, as in other areas of activity, increased both in their range and in the number of countries in which they took place. At present, such programmes are being conducted with the three Council of Europe member States in Central and Eastern Europe: Bulgaria, Hungary and Poland; with non-member States: Albania, Croatia, the Czech Republic, Estonia, Latvia, Lithuania, Romania, the Slovak Republic and Slovenia[34]; a number of former Soviet republics for which a special programme, "Demosthenes-bis", has been launched: Belarus, Moldova, the Russian Federation and the Ukraine, which are co-operating with the Council in all fields; Armenia, Azerbaijan and Georgia, with which the Committee of Ministers has authorised the opening of a dialogue and an exchange of information on human rights and the rule of law; and finally, Kazakhstan and Kyrgyzstan, which are receiving ad hoc technical assistance, but have no prospect of joining the Council.

While human rights co-operation and assistance programmes initially concentrated on constitutional and legislative reform (activities which continue to date), a greater emphasis has

[34]The Committee of Ministers suspended co-operation with Yugoslavia on 8 October 1991, although the domestic crisis there had largely prevented assistance activities for some months prior to this decision.

more recently been given to training activities, especially for the legal community as well as media professionals.

These programmes overlap with the Organisation's wider, and obviously related, legal co-operation programmes, such as the **Demo-Droit** projects which focus, *inter alia*, on the organisation of the judicial system, independence of the judiciary, access to justice and the reform of criminal codes and codes of criminal procedures; and the **Themis Plan**, which presently consists of training projects for, among others, policemen, judges, prosecuting authorities and prison administration officials.

Mention should also be made of the important work carried out by the **Venice Commission** (European Commission for Democracy through Law), a consultative body on matters of constitutional law, which was set up under a Council of Europe Partial Agreement in May 1990. The Commission is particularly active in the field of constitutional reform in the countries of Central and Eastern Europe, as well as constitutional justice and the protection of minorities. Its work compliments the Council of Europe's assistance programme for legal reform in the countries of Central and Eastern Europe, in particularly the Demosthenes Programme. At present 24 of the Council of Europe's member States belong. Albania, Croatia, Latvia, Lithuania, Romania, Russia and Slovenia are associate members, while Canada, Kyrgyzstan, the Holy See and the United States of America are observers.

In November 1991, representatives of most Central and Eastern European Governments, including the then Soviet Union, together with Council of Europe member States, representatives of Canada, the USA, and intergovernmental organisations as well as more than a dozen international non-governmental organisations, associations and educational institutions met in Strasbourg for an exchange of information and views on human rights and legal co-operation and assistance programmes for the countries of Central and Eastern Europe. The exercise was repeated one year later, from 21 to 23 October 1992, and a third co-ordination meeting is scheduled for October 1993. A particular focus of these meetings has been to provide an opportunity for Central and Eastern European Governments to outline their priority needs in assistance activities. The aim is also to identify common areas of activities and to establish links between the various partners, covering such topics as bringing legislation into conformity with international and European human rights standards, the provision and dissemination of information on such standards, training and its modalities, human rights education and the important contribution of non-governmental organisations to these areas.[35]

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2. The Council of Europe and the Conference on Security and Co-operation in Europe (CSCE)

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[35] For further information on this and related subjects, *see* the 1992 Annual Report of the Council of Europe's co-operation and assistance programmes with Central and Eastern European countries, doc. SG/INF (93) 1.

The CSCE has contributed significantly to the transformation of Europe's political environment. The Copenhagen meeting of the Conference on the Human Dimension of the CSCE (June 1990) showed the substantial changes that had come about and are continuing in Central and Eastern Europe, both as concerns philosophy and attitude to the international law of human rights and international supervisory machinery relating thereto. Hence the importance not only of the Council of Europe's expertise in the field of human rights, as acknowledged in the final document of the Copenhagen meeting, but also the need to provide a follow-up to what participating States agreed, in particular consideration of "further ways and means to enable the Council of Europe to make a contribution to the Human Dimension of the CSCE".

The Committee of Ministers of the Council of Europe, meeting in Rome on 6 November 1990 for its 87th Session, expressed its conviction that, by making available its achievements and potential to a growing number of countries, the Council of Europe would make an essential contribution to the CSCE process. Referring to multilateral co-operation in the various aspects of the Human Dimension of the CSCE, the Ministers stated their readiness to invite the States participating in the CSCE process which are not, or not yet, members of the Council of Europe to take part in certain of its activities in a manner to be agreed.

In the Charter of Paris for a New Europe, adopted at the CSCE Summit in November 1990, the CSCE participating States recognised the important contribution of the Council of Europe to the promotion of human rights and the principles of democracy and rule of law and welcomed the Council's readiness to make its experience available to the CSCE. In the Document of the Moscow meeting of the Conference on the Human Dimension (October 1991), participating States again acknowledged the extensive experience and expertise of the Council of Europe in the field of human rights and welcomed its contribution to strengthening democracy in Europe. More recent meetings have reiterated these sentiments.

In June 1991, the Council of Europe convened an ad hoc committee of experts to exchange views on standard-setting activities of the CSCE in the field of human rights (CAHSC), inviting all CSCE participating States. The second meeting of this Committee,[36] held in Strasbourg in February 1992, agreed on the indispensability of co-ordination between the CSCE and the Council of Europe and the desirability of institutionalising this relationship. The need to co-ordinate efforts with respect to human rights assistance programmes for Central and Eastern Europe was emphasized, as well as to provide help to the newly independent Republics of the former Soviet Union. The significance of the Helsinki Follow-Up Meeting (March-July 1992) was also underlined in this regard.

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[36] At this second meeting, most participants considered that standard-setting within the CSCE had now ended, and that the CSCE would move from the elaboration of human rights standards to concentrating on their effective implementation. In consequence, the name of the ad hoc committee (which will meet again in June 1993) is now: ad hoc committee of experts on the CSCE Human Dimension issue. Its terms of reference are: "To exchange opinions with a view to facilitating co-ordination of action on CSCE Human Dimension issues and relevant Council of Europe human rights activities".

At the Helsinki Follow-Up Meeting (24 March-8 July 1992), the Council of Europe reiterated its willingness to put at the disposal of all CSCE participating States its structures and administrative facilities for specific contributions to CSCE objectives in the Human Dimension, as defined by the CSCE. Forms of co-operation could be mutually agreed in each case according to needs, and projects could be open to participation by all the CSCE States on an equal footing, whether or not they are members of the Council of Europe.

Areas which it has been suggested might fall within this domain include: human rights education; access to Council of Europe computerised data on human rights; new problems raised for societies and institutions by the development of democracy, particularly from the human rights perspective; equality between women and men; the inculcation and development of a diversified way of life in a multicultural society; and the promotion of mutual understanding as an essential factor for the protection of minorities.

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3. "Greater Europe" projects

The "Greater Europe" projects of the Council of Europe offer all non-member European States the opportunity of taking part, with member States of the Organisation, in the implementation of activities which, on account of their content and purpose, require a pan-European response. The number of these projects has increased in 1993. They cover a wide range of Council of Europe activities including: migration, demography and employment; human dignity and social deprivation; international youth mobility; the European dimension of the environment; and minority languages. The major "Greater Europe" project in the human rights field is "Human Rights and Genuine Democracy" - mentioned earlier in this report (section III.8).

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APPENDIX I

TYPES OF CASES REFERRED TO THE EUROPEAN COURT OF HUMAN RIGHTS, 1959-1992

Since its creation in 1959 and until the end of 1992, the Court has had referred to it 395 cases. They originated in 473 applications lodged with the Commission and have raised a wide variety of issues.

1. *Cases concerning principally physical integrity* **Article 3**

- ill-treatment in Northern Ireland (IRELAND v. THE UNITED KINGDOM), in France (TOMASI) and in Germany (KLAAS), birching as a punishment for a criminal offence in the Isle of Man (TYRER), corporal punishment in State schools in Scotland (CAMPBELL AND COSANS), and in private schools in England (COSTELLO-ROBERTS and Y v. UNITED KINGDOM), risk for a German national of being exposed to the "death-row phenomenon" if extradited by the United Kingdom authorities to the United States of America (SOERING), risk alleged by Chilean nationals (CRUZ VARAS AND OTHERS) and Sri Lankan Tamils (VILVARAJAH AND OTHERS and VIJAYANATHAN AND PUSPARAJAH) of being exposed to torture or inhuman treatment in the event of being expelled to Chile by the Swedish authorities (in the former cases) or to Sri Lanka by the British and French authorities (in the latter cases) and conditions of detention in an Austrian psychiatric hospital (HERCZEGFALVY).

2. *Case concerning principally prohibition of forced labour* **Article 4**

- obligation, for a Belgian trainee lawyer, to provide free legal assistance to an accused lacking financial resources (VAN DER MUSSELE) (Articles 4 and 14 of the Convention and Article 1 of Protocol No. 1).

3. *Cases concerning principally the right to liberty and security of person* **Article 5**

- military disciplinary and criminal proceedings in the Netherlands (ENGEL AND OTHERS; DE JONG, BALJET AND VAN DEN BRINK; VAN DER SLUIJS, ZUIDERVELD AND KLAPPE; DUINHOF AND DUIJF; KOSTER) (Articles 5, 6, 10, 13 and 14 of the Convention);

- detention without trial ordered under Irish legislation concerning offences against the State (LAWLESS) and special measures in Northern Ireland (IRELAND v. THE UNITED KINGDOM) (Articles 5, 6, 14 and 15 of the Convention);

- arrest and detention of persons suspected of being terrorists under the Northern Ireland (Emergency Provisions) Act 1978 (FOX, CAMPBELL AND HARTLEY);

- detention of a recidivist in Belgium (VAN DROOGENBROECK) and indeterminate prison sentences in the United Kingdom (WEEKS; THYNNE, WILSON AND GUNNELL);

- detention in Austria for refusing to give evidence (K. v. AUSTRIA);

- placement of a minor in a remand centre in Belgium as a provisional custodial measure (BOUAMAR) and in a child's psychiatric ward of a public hospital in Denmark (NIELSEN);

- court order for compulsory residence in Italy (GUZZARDI; CIULLA);

- arrest and detention of a person who claimed to have been taken against his will onto the territory of Germany (STOCKÉ), and justification of an arrest in Austria (CHORHERR);

- refusal to count time spent in custody in the United Kingdom, by persons convicted of criminal offences pending the outcome of (unsuccessful) applications for leave to appeal towards service of prison sentences (MONNELL AND MORRIS) (Articles 5, 6 and 14 of the Convention);

- detention of persons of unsound mind in the Netherlands (WINTERWERP; VAN DER LEER; WASSINK; KOENDJBIHARIE; KEUS), in the United Kingdom (X v. THE UNITED KINGDOM; ASHINGDANE), in Italy (LUBERTI) and

in Austria (HERCZEGFALVY), and of vagrants in Belgium (DE WILDE, OOMS AND VERSYP);

- detention in Belgium with a view to extradition (KOLOMPAR) and in France with a view to deportation (BOZANO);

- right of a person arrested or remanded in custody to be brought promptly before a judge or other officer authorised by law to exercise judicial power, in Switzerland (SCHIESSER; HUBER), in Sweden (SKOOGSTRÖM; MCGOFF), in Belgium (PAUWELS), in the United Kingdom (BROGAN AND OTHERS; BRANNIGAN AND MCBRIDE) and in Italy (BRINCAT);

- detention on remand for prolonged periods in Germany (WEMHOFF), in Austria (NEUMEISTER; STÖGMÜLLER; MATZNETTER; RINGEISEN; CAN; B. v. AUSTRIA; TOTH), in Italy (VALLON), in France (WOUKAM MOUDEFO; LETELLIER; KEMMACHE; BIROU; TOMASI), in Belgium (CLOOTH) and in Switzerland (W. v. SWITZERLAND);

- length of proceedings on appeal against the dismissal of an application for release pending trial in France (NAVARRA);

- non-adversarial nature of appeal proceedings against the refusal, in Austria, of applications for provisional release (TOTH);

- accused's lack of access to the files of the authorities reviewing his detention on remand in Belgium (LAMY);

- length of proceedings for examination of an application for release by a person held in detention on remand in Italy (BEZICHERI) and in France (LETELLIER); right of persons held in preventive detention or in a psychiatric hospital or pending extradition to have the lawfulness of the detention decided speedily by a court (SANCHEZ-REISSE v. SWITZERLAND, E. v. NORWAY, MEGYERI v. GERMANY, FARMAKOPOULOS v. BELGIUM).

4. *Cases concerning principally the right to a fair trial* **Article 6**

- lack of any judicial remedy in the Netherlands against the refusal of a licence for an installation for delivery of liquid petroleum gas (BENTHEM), against the refusal of requests for registration as certified accountants (VAN MARLE AND OTHERS) or against an order whereby an area was scheduled as a protected natural site and certain uses of the land were thus made subject to prior authorisation (OERLEMANS); and in Sweden against the withdrawal of a licence to operate a taxi service (PUDAS) as well as against the issue or the duration of an expropriation permit (SPORRONG AND LÖNNROTH; BODÉN), against the revocation of a licence to serve alcoholic beverages (TRE TRAKTÖRER AB), against a prohibition on building (ALLAN JACOBSSON), against the refusal to grant a permit to retain agricultural land purchased at a public auction (HÅKANSSON AND STURESSON), against the alteration of a planning scheme (MATS JACOBSSON), against the withdrawal of a permit to work a gravel pit (FREDIN) and against the refusal to grant planning permission (SKÄRBY) (Articles 6 and 13 of the Convention, Article 1 of Protocol No. 1);

- absence, in the Canton of Vaud (Switzerland), of any right of appeal on the law and the facts against an administrative fine (BELILOS) and, in France, against a Ministerial fine for economic offences (SOCIÉTÉ STENUIT);

- litigation concerning social security benefits for sickness in the Netherlands (FELDBRUGGE) and for industrial accidents in Germany (DEUMELAND);

- prison disciplinary proceedings in England (CAMPBELL AND FELL);

- obstruction of detainees' access to the English courts (GOLDER; SILVER AND OTHERS; CAMPBELL AND FELL; ASHINGDANE) (Articles 6 and 8 of the Convention);

- right of access to the courts to contest paternity in Denmark (RASMUSSEN) (Articles 6, 8 and 14 of the Convention); to recover an engineer's fees in Greece (PHILIS) (Articles 6 and 13 of the Convention); to challenge a Ministerial Decree affecting property rights in France (DE GEOUFFRE DE LA PRADELLE) (Articles 6 and 13 of the Convention); to contest expropriation of land in Austria (ZUMTOBEL); to obtain a review of the granting of a refuse-dumping licence in Sweden (ZANDER);

- the effect of legal costs on access to the courts in Ireland (AIREY) (Articles 6 and 8 of the Convention);

- payment of a fine by way of settlement to avoid closure of a butcher's shop ordered for infringement of price regulations in Belgium (DEWEER) (Article 6 of the Convention and Article 1 of Protocol No. 1);

- interrogation of a suspect in the absence of his lawyer, in Switzerland (IMBROSCIA);

- criminal trial conducted in the absence of the accused in Italy (COLOZZA; RUBINAT; BROZICEK; F.C.B. v. ITALY; T. v. ITALY), in Greece (STAMOULAKATOS) and in France (POITRIMOL);

- proceedings conducted in the Belgian Audit Court without a public hearing and in the absence of the accused (MUYLDERMANS);

- application of rule of evidence that a party may not be heard as a witness in his own case, in civil proceedings in the Netherlands (DOMBO BEHEER B.V.);

- access to the case-file in social security proceedings in Switzerland (SCHULER-ZGRAGGEN);

- criminal proceedings said by the accused to be unfair, in Austria (BÖNISCH; UNTERPERTINGER; KAMASINSKI; WINDISCH; ASCH; BRANDSTETTER; ARTNER; KREMZOW), in Spain (BARBERÀ, MESSEGUÉ AND JABARDO), in Switzerland (SCHENK; WEBER), in Germany (COLAK; STOCKÉ; HENNINGS; CROISSANT), in Belgium (DELCOURT; BRICMONT; BORGERS), in the Netherlands (KOSTOVSKI), in France (DELTA; CARDOT; PHAM HOANG; FUNKE; SAIDI), in Italy (ISGRÒ) and in the United Kingdom (EDWARDS; S. v. THE UNITED KINGDOM);

- appeal proceedings said to be unfair, before the Swiss Federal Court (KRASKA) and before the French Court of Cassation (MELIN);

- absence of a hearing on the merits on appeal in commercial proceedings in France (PARDO);

- equality of arms in the Spanish Constitutional Court (RUIZ-MATEOS);

- judicial proceedings conducted without a hearing (AXEN v. GERMANY; SUTTER AND WEBER v. SWITZERLAND; EKBATANI; HELMERS; JAN-ÅKE ANDERSSON AND FEJDE v. SWEDEN), in Austria (ZUMTOBEL) and in Switzerland (SCHULER-ZGRAGGEN) and without public pronouncement of the final decision (AXEN v. GERMANY; SUTTER AND WEBER v. SWITZERLAND; PRETTO AND OTHERS v. ITALY);

- length of proceedings before:

  criminal courts: in Germany (WEMHOFF; ECKLE), in Austria (NEUMEISTER; RINGEISEN; LECHNER AND HESS; B. v. AUSTRIA; MLYNEK), in Italy (FOTI AND OTHERS; CORIGLIANO; VALLON; BAGGETTA; MILASI; ADILETTA AND OTHERS; ALIMENA; ANGELUCCI; COLACIOPPO; FERRARO; FICARA; FRAU; GIROLAMI; MAJ; MANZONI; MORI; MOTTA; PUGLIESE (I); TRIGGIANI; VIEZZER; MESSINA), in Portugal (MOREIRA DE AZEVEDO), in France (CLERC; KEMMACHE; TOMASI; DOBBERTIN), in Belgium (BODDAERT) and in the Netherlands (ABDOELLA; BUNKATE);

  civil courts: in Italy (PRETTO AND OTHERS; CAPUANO; BRIGANDÌ; MOTTA; SANTILLI; ZANGHÌ; PUGLIESE (II); CALEFFI; VOCATURO; DIANA; RIDI; CASCIAROLI; MANIERI; MASTRANTONIO; IDROCALCE S.R.L.; OWNERS' SERVICES LTD; CARDARELLI; GOLINO; TAITI; MACIARIELLO; MANIFATTURA FL; STEFFANO; RUOTOLO; GILBERTI; VORRASI; CAPPELLO; NONNIS; G. v. ITALY; CAFFÉ ROVERSI S.P.A.; TROTTO; NIBBIO; BORGESE; BIONDI; MACALUSO; MONACO; ANDREUCCI; CATTIVERA; SERI; GANA; MANUNZA; BARBAGALLO; CIFOLA; PANDOLFELLI AND PALUMBO; ARENA; PIERAZZINI; TUSA; GORI; COOPERATIVA PARCO CUMA; SERRENTINO; CASADIO; TESTA; LESTINI; COVITTI; ZONETTI; SIMONETTI; CORMIO; LORENZI, BERNARDINI AND GRITTI; DAL SASSO; TUMMINELLI; LOMBARDO; CESARINI; SALERNO; G.L. v. ITALY; PIZZETTI; DE MICHELI; F.M. v. ITALY; SALESI; TREVISAN; BILLI; SCUDERI; M.R. v. ITALY; SCOPELLITI; ISTITUTO DI VIGILANZA - CITTA DI TORINO S.R.L.; FIGUS MILONE; GOISIS), in Portugal (GUINCHO; MARTINS MOREIRA; NEVES E SILVA), in Austria (LECHNER AND HESS), in Spain (UNIÓN ALIMENTARIA SANDERS S.A.; RUIZ-MATEOS), in Germany (BOCK), in France (VERNILLO; MONNET) and in Greece (PHILIS);

  courts of audit: in Italy (MASSA);

  social or labour courts: in Germany (BUCHHOLZ; DEUMELAND), in Portugal (OLIVEIRA NEVES), in Austria (OBERMEIER) and in the United Kingdom (DARNELL);

administrative courts: in Germany (KÖNIG), in Switzerland (ZIMMERMANN AND STEINER), in Portugal (BARAONA), in Austria (ERKNER AND HOFAUER; POISS; WIESINGER) and in France (H. V. FRANCE; EDITIONS PÉRISCOPE; X. v. FRANCE);

- independence and impartiality of administrative tribunals in Austria (RINGEISEN; SRAMEK; ETTL AND OTHERS) and in Sweden (LANGBORGER), of criminal courts in Belgium (PIERSACK; DE CUBBER; BEN YAACOUB), in Denmark (HAUSCHILDT), in Iceland (JÓN KRISTINSSON), in Austria (OBERSCHLICK; PFEIFER AND PLANKL; FEY), in Andorra (DROZD AND JANOUSEK - case against France and Spain), in Italy (PADOVANI), in France (SAINTE-MARIE) and in Sweden (HOLM), of a juvenile court in the Netherlands (NORTIER) and of the House of Representatives in breach of privilege proceedings in Malta (DEMICOLI);

- compulsory membership, in Belgium, of the Medical Association and procedure before the latter in disciplinary matters (LE COMPTE, VAN LEUVEN AND DE MEYERE; ALBERT AND LE COMPTE) (Articles 6 and 11 of the Convention);

- procedure followed by a Bar Association Council in Belgium in examining a request for restoration to the register (H. v. BELGIUM);

- presumption of innocence in Austria (ADOLF; BRANDSTETTER), in Switzerland (MINELLI), in Germany (ENGLERT; LUTZ; NÖLKENBOLKHOFF), in Spain (BARBERÁ, MESSEGUÉ AND JABARDO), in France (SALABIAKU; PHAM HOANG) and in Malta (DEMICOLI);

- refusal to award compensation for detention on remand because of suspicion that persisted after acquittal, in Austria (SEKANINA);

- right of an accused to be informed promptly of the nature and cause of the accusations against him and to have adequate time and facilities for the preparation of his defence in France (CHICHLIAN AND EKINDJIAN), in Greece (HADJIANASTASIOU) and in Italy (T. v. ITALY);

- right to an effective defence in Italy (ARTICO; GODDI), in Germany (PAKELLI), in Austria (CAN), in the United Kingdom (GRANGER), in Switzerland (QUARANTA; S. v. SWITZERLAND) and in Belgium (VIDAL);

- right to the effective assistance of a lawyer to file an appeal on a point of law against the dismissal of an application for release from detention in France (WOUKAM MOUDEFO) or against a conviction for a criminal offence (PHAM HOANG) (Articles 5 and 6 of the Convention);

- right of a person charged with a criminal offence (LUEDICKE, BELKACEM AND KOÇ), or of a person subject to administrative proceedings for a regulatory offence (*Ordnungswidrigkeit*) (OZTURK), to have the free assistance of an interpreter in Germany.

5. *Case concerning the principle that only the law can define a crime and prescribe a penalty* **Article 7**

- allegedly imprecise criminal legislation in Greece (KOKKINAKIS) (Article 9 as well as Article 7 of the Convention).

6. *Cases concerning principally the right to respect for private and family life, home and correspondence, and the right to marry* **Article 8**

- status of unmarried mothers and children born out of wedlock in Belgium (MARCKX; VERMEIRE) (Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1);

- different questions relating to the placement of children in the care of a public authority in the United Kingdom (O., H., W., B. AND R. v. THE UNITED KINGDOM; GASKIN) and in Sweden (OLSSON; ERIKSSON; NYBERG; RIEME; MARGARETA AND ROGER ANDERSSON AND OLSSON (no. 2)) (Articles 8, 6 and 13 of the Convention);

- prohibition of divorce in Ireland and the resultant legal consequences for an unmarried couple living together and for their child (JOHNSTON AND OTHERS) (Articles 8, 9, 12, 13 and 14 of the Convention);

- temporary prohibition of remarriage, after divorce, in respect of the party responsible for the breakdown

(F. v. SWITZERLAND) (Article 12 of the Convention);

- impossibility under Dutch law of having criminal proceedings instituted against the perpetrator of a sexual assault on a minor girl aged over sixteen but incapable of determining her will by reason of a mental handicap (X AND Y v. THE NETHERLANDS) (Articles 3, 8, 13 and 14 of the Convention);

- criminal laws prohibiting homosexual activities between males in Northern Ireland (DUDGEON), in Ireland (NORRIS) and in Cyprus (MODINOS) (Article 8 of the Convention);

- absence in Belgium (VAN OOSTERWIJCK), in the United Kingdom (REES; COSSEY) and in France (B. v. FRANCE) of laws allowing account to be taken of a change of sex (Articles 8 and 12 of the Convention);

- application of the immigration rules in the United Kingdom (ABDULAZIZ, CABALES AND BALKANDALI), of expulsion rules in the Netherlands (BERREHAB), in Belgium (MOUSTAQUIM), in France (DJEROUD; BELDJOUDI) and in Sweden (CRUZ VARAS AND OTHERS) and the law on deportation in the United Kingdom (LAMGUINDAZ) (Articles 8, 13 and 14 of the Convention);

- clandestine control of correspondence and telecommunications in Germany (KLASS AND OTHERS), in the United Kingdom (MALONE), in France (HUVIG; KRUSLIN; A. v. FRANCE) and in Switzerland (LÜDI) (Articles 8 and 13 of the Convention);

- refusal to employ a person at a naval museum in Sweden because of information on him kept in a secret police register (LEANDER) (Articles 8, 10 and 13 of the Convention);

- restrictions concerning correspondence and visits imposed on convicted prisoners in the United Kingdom (GOLDER; SILVER AND OTHERS; CAMPBELL AND FELL; BOYLE AND RICE; MCCALLUM; CAMPBELL), on an accused person and a lawyer instructed to defend him in Switzerland (SCHÖNENBERGER AND DURMAZ), on detained vagrants in Belgium (DE WILDE, OOMS AND VERSYP) and on two persons in detention on remand in Austria (PFEIFER AND PLANKL) (Articles 8 and 13 of the Convention);

- restrictions on the right of owners to live in their house in Guernsey (GILLOW) (Articles 6, 8 and 14 of the Convention);

- search of premises in execution of a court order obtained in civil proceedings in the United Kingdom (CHAPPELL), of homes by French customs authorities (FUNKE; CRÉMIEUX, MIAILHE AND OTHERS) and of a lawyer's chambers in Germany (NIEMIETZ) (Article 8 of the Convention).

7. *Cases concerning principally the freedom of religion* **Article 9**

- prohibition of "proselytism" in Greece (KOKKINAKIS) (Article 7 as well as Article 9 of the Convention);

- decision regarding custody in divorce proceedings based on religion of one parent in Austria (HOFFMANN) (Articles 8 and 14 as well as Article 9 of the Convention).

8. *Cases concerning principally the freedom of expression* **Article 10**

- forfeiture of certain rights in the field of freedom of expression, imposed in Belgium for collaboration with the occupying forces (DE BECKER);

- compatibility with freedom of expression of the obligation to swear allegiance to the Constitution in order to be appointed to a civil service post in Germany (GLASENAPP; KOSIEK);

- restriction on a veterinary surgeon's freedom of expression, imposed in Germany by virtue of an Act on unfair competition taken in conjunction with the veterinary surgeons' rules of professional conduct (BARTHOLD); prohibition imposed on a German publishing firm and its editor-in-chief restraining them from repeating various statements in their newssheet (MARKT INTERN VERLAG GMBH AND KLAUS BEERMANN) (Article 10 of the Convention);

- conviction of a publisher or a painter and exhibition organisers and seizure and forfeiture of a book or

paintings under legislation on obscene publications in the United Kingdom (HANDYSIDE) and in Switzerland (MÜLLER AND OTHERS) (Article 10 of the Convention and Article 1 of Protocol No. 1);

- restrictions on the right of the press to comment on civil proceedings pending before the English courts (*SUNDAY TIMES*) or to disclose certain information published in the memoirs of a retired member of the British secret service (*SUNDAY TIMES* (no. 2)); *OBSERVER* AND *GUARDIAN*); conviction of a journalist for defamation of the Austrian Federal Chancellor (LINGENS) and the general secretary of the Austrian Liberal Party (OBERSCHLICK), for criticism of two lay judges in Greenland (BARFOD) and for the offence of defaming public servants in Iceland (THORGEIR THORGEIRSON);

- restrictions on counselling agencies in Ireland from providing information to pregnant women concerning abortion facilities in Britain (OPEN DOOR AND DUBLIN WELL WOMAN);

- conviction of a Swiss national for having, at a press conference, breached the confidentiality of a judicial investigation (WEBER), of an Austrian citizen for the offence of reproaching a person with a criminal offence (SCHWABE) and of a Spanish senator for defaming the government (CASTELLS);

- prohibition on Swiss cable companies with a community-antenna franchise from re-broadcasting programmes received from transmitters which did not comply with the requirements of international radio and telecommunication agreements (GROPPERA RADIO AG AND OTHERS); refusal of the Swiss Post and Telecommunications authority to allow a company specialising in electronics to show a public programme from a foreign television service which it received directly from a satellite by means of a private dish aerial (AUTRONIC AG);

- monopoly of Austrian state broadcasting agency (INFORMATIONSVEREIN LENTIA AND OTHERS);

- arrest for displaying posters at a military parade in Austria (CHORHERR).

9. *Case concerning principally the right of peaceful assembly* **Article 11**

- disciplinary penalty imposed on a barrister who had taken part in a demonstration in Guadeloupe (EZELIN) (Articles 10 and 11 of the Convention).

10. *Cases concerning principally trade union freedom* **Article 11**

- scope of trade union freedom in Belgium (NATIONAL UNION OF BELGIAN POLICE) and in Sweden (SWEDISH ENGINE DRIVERS' UNION; SCHMIDT AND DAHLSTRÖM) (Articles 11 and 13 of the Convention);

- dismissal of British railwaymen following an agreement making membership of a trade union a condition of employment (YOUNG, JAMES AND WEBSTER);

- membership of a trade union a condition for favourable employment posting with a company in the United Kingdom (SIBSON);

- membership of professional organisation a precondition for obtaining a taxi licence in Iceland (SIGURDUR SIGURJONSSON).

11. *Cases concerning principally the right to an effective remedy before a national authority* **Article 13**

- remedies open in the United Kingdom to prisoners (BOYLE AND RICE; MCCALLUM), to persons exposed to the noise of aircraft taking off and landing at Heathrow airport (POWELL AND RAYNER) and to persons ordered to be extradited or expelled (SOERING; VILVARAJAH AND OTHERS), and in Austria to demonstrators (*PLATFORM "ÄRZTE FÜR DAS LEBEN"*).

12. *Cases concerning principally the right of property* **Article 1, Protocol 1**

- occupation of land by Greek State without compensation (PAPAMICHALOPOULOS AND OTHERS);

- issues concerning expropriation permits and prohibitions on construction in Sweden (SPORRONG AND LÖNNROTH; ALLAN JACOBSSON);

- refusal to grant a permit to retain agricultural land in Sweden purchased at a public auction and subsequent compulsory sale thereof (HÅKANSSON AND STURESSON) (Article 1 of Protocol No. 1 and Articles 6 and 14 of the Convention);

- withdrawal of a permit to work a gravel pit in Sweden (FREDIN) (Article 1 of Protocol No. 1 and Articles 6 and 14 of the Convention);

- levels of shareholders' compensation for property nationalised in the aircraft and shipbuilding industries in the United Kingdom (LITHGOW AND OTHERS) (Article 1 of Protocol No. 1 and Articles 6, 13 and 14 of the Convention);

- confiscation by British customs authorities of smuggled goods belonging to a third party (AGOSI) (Article 1 of Protocol No. 1 and Article 6 of the Convention);

- legislation in England and Wales giving long-term tenants the right in certain circumstances compulsorily to purchase the landlord's interest in the property (JAMES AND OTHERS) (Article 1 of Protocol No. 1 and Articles 6, 13 and 14 of the Convention);

- agricultural land consolidation proceedings in Austria (ERKNER AND HOFAUER; POISS; WIESINGER);

- the preferential attribution of a farm in Carinthia (Austria) to a legitimate child rather than to his half brother born out of wedlock (INZE) (Article 1 of Protocol No. 1 and Article 14 of the Convention);

- rent reductions imposed under Austrian legislation (MELLACHER AND OTHERS) (Article 1 of Protocol No. 1 and Article 14 of the Convention);

- obligation to pay a church tax in Sweden (DARBY) (Article 1 of Protocol No. 1; Articles 9 and 14 of the Convention);

- issues related to a decision by the Supreme Court of Ireland that a grant of outline planning permission was a nullity (PINE VALLEY DEVELOPMENTS LTD. AND OTHERS) (Article 1 of Protocol No. 1 and Articles 14 and 13 of the Convention).

13. *Cases concerning principally the right to education* **Article 2, Protocol 1**

- Case relating to certain aspects of the law on the use of languages in education in Belgium (Article 2 of Protocol No. 1 and Articles 8 and 14 of the Convention);

- compulsory sex education in State primary schools in Denmark (KJELDSEN, BUSK MADSEN AND PEDERSEN);

- corporal punishment in Scottish schools (CAMPBELL AND COSANS).

14. *Case concerning principally the right to free elections* **Article 3, Protocol 3**

- manner of nomination of representatives on the Flemish regional assembly in Belgium (MATHIEU-MOHIN AND CLERFAYT) (Article 3 of Protocol No. 1 and Article 14 of the Convention).

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APPENDIX II

NATIONAL REFORMS ATTRIBUTABLE TO THE EUROPEAN SOCIAL CHARTER

AUSTRIA

1. Social and medical assistance was extended to certain categories of aliens (Article 13, paragraph 4).

2. On 1 January 1975, new legislation entered into force repealing the provisions of the Vagrancy Act and Article 305 of the Criminal Code, deemed incompatible with the right to engage in a freely chosen occupation (Article 1, paragraph 2).

3. A 1979 act brought domestic law more closely into line with the requirements of Article 4, paragraph 3, on equal pay for women and men.

4. A directive of the Ministry of Social Affairs laid down that young immigrants who are nationals of other countries bound by the Charter are eligible to take up apprenticeships in Austria (Article 10, paragraph 2).

5. On 1 July 1988, an amendment to the 1975 Aliens Employment Act came into force, exempting second-generation immigrants from the requirement to hold a work permit in order to serve an apprenticeship.

CYPRUS

1. Civil servants' freedom to organise was strengthened (Article 5).

2. The reform of the Social Insurance Act, which came into force on 1 January 1973, created a full-scale social security scheme (Article 12, paragraph 1).

3. The 1976 Aliens and Immigration Act afforded foreign workers various safeguards in the event of expulsion (Article 19, paragraph 8).

4. With the Merchant Shipping Act of 11 June 1976, Cypriot legislation was brought into line with the prohibition of forced labour within the meaning of Article 1, paragraph 2, of the Charter (abolition of criminal penalties and other coercive measures such as "professional disciplinary measures", except in cases where the lives or safety of persons on board the ship or the safety of the ship itself are put at risk by the conduct of a seaman who refuses to rejoin the ship or carry out his duties).

5. On 30 October 1982, regulations came into force to extend the activities of the Labour Inspectorate to agriculture (Article 3, paragraphs 1 and 2).

6. A Maternity Protection Act was adopted in 1987, drafted in the light of Article 8 of the Charter.

7. The adoption, in 1989, of an Act providing for equal pay of men and women for work of equal value, which was elaborated taking into account Article 4, paragraph 3, of the Charter and of the case-law of the Committee of Independent Experts.

FRANCE

1. Social and medical assistance was extended to certain categories of aliens (Article 13, paragraph 4); subsequently, in a circular of 10 October 1989, the French Minister for National Solidarity, Health and Welfare Protection gave instructions to the effect that Cypriot nationals should in future be given equal treatment in the field of social and medical assistance. This brought the situation into line with France's obligations under Article 13, paragraph 4.

2. Equality of treatment between aliens and nationals was strengthened in respect of certain social security benefits (Article 12, paragraph 4).

3. Since the ratification of the Charter (1973), the age limit for family reunification has been raised from 18 to 21 for nationals of the other Contracting States, Turkish nationals being the most recent beneficiaries of this reform (Article 19, paragraph 6, and appendix).

4. An act of 9 July 1975 abolished the system whereby an alien could be required to pay a deposit in order to be a party to legal proceedings (*cautio judicatum solvi*) (Article 19, paragraph 7).

5. An act of 28 October 1982 put an end to certain forms of discrimination against aliens in trade union matters relating to access to managerial and administrative posts (Article 5 and Article 19, paragraph 4).

6. Persons receiving welfare assistance are no longer prohibited from standing as candidates in certain local government elections (Article 13, paragraph 2).

GERMANY

1. With the Merchant Shipping Act of 29 October 1974, the situation was brought into line with the prohibition of forced labour within the meaning of Article 1, paragraph 2 (see Cyprus, paragraph 4).

2. The 1976 Act on the protection of young persons at work introduced considerable improvements in line with Article 7 of the Charter.

ICELAND

In 1985, Article 180 of the Criminal Code, which was not in conformity with Article 1, paragraph 2, of the Charter, was repealed.

IRELAND

1. Discriminatory measures against the employment of women in the civil service were abolished (Article 1, paragraph 2).

2. The legislation on the protection of young people at work was reformed (Article 7).

3. The 1977 Protection of Young Persons (Employment) Act provides that the hours spent by adolescents in vocational training count as normal working hours (Article 7, paragraph 6).

4. Two acts concerning a reasonable period of notice for termination of employment (the 1973 Minimum Notice and Terms of Employment Act and the 1977 Unfair Dismissal Act) marked

a considerable step forward in terms of compliance with Article 4, paragraph 4.

5. An act of 1972 on local elections and the 1898 Schedule to Local Government Order, as amended, put an end to discrimination against persons receiving social and medical assistance (Article 13, paragraph 2).

6. The 1987 Status of Children Act established equal rights for all children in Ireland, irrespective of the marital status of their parents. This act abolished previous provisions affecting children born out of wedlock in such fields as custody, maintenance and property rights, including succession rights (Article 17).

ITALY

Expulsion on grounds of poverty is now prohibited (Article 19, paragraph 8).

NETHERLANDS

1. An act of 8 March 1980 afforded treatment to migrant workers which was not less favourable than that of nationals of the Netherlands in respect of legal proceedings (Article 19, paragraph 7).

2. The Interim Act on the right of nationals to leave the country (instructions on passports) came into force on 17 February 1988.

NORWAY

A 1975 act brought the situation of seamen into line with the prohibition of forced labour within the meaning of Article 1, paragraph 2 (see Cyprus, paragraph 4).

SPAIN

1. The Workers' Statute of 10 March 1980 was amended with a view to ratification of the Charter by Spain.

2. An act of 2 August 1984 abolished the reciprocity principle applicable to the eligibility of foreign workers for staff representation duties (Article 5 and Article 19, paragraph 4). The same act abolished all forms of discrimination against foreign workers in trade union matters (Article 5).

3. An act of 1 July 1985 introduced wider safeguards against the expulsion of aliens (Article 19, paragraph 8).

4. An act of 31 July 1985 abolished a restrictive condition (*de alta*) regarding the allocation of certain pensions (Article 12, paragraphs 2 and 3).

SWEDEN

1. The Merchant Shipping Act of 18 May 1973 brought the situation into line with the prohibition of forced labour within the meaning of Article 1, paragraph 2 (see Cyprus, paragraph 4).

2. Closed shop agreements were brought under much stricter control by the act of 10 June 1976 on co-determination at work.

3. The obligation on employers to finance language courses for the immigrant workers on their payroll, which created *de facto* discrimination, was abolished in 1986 (Article 19, paragraph 5).

UNITED KINGDOM

1. The legislation on the protection of young people at work has been revised (Article 7).

2. Section 89 of the 1970 Merchant Shipping Act, which provides for the forcible return of a deserting seaman to his ship in certain cases and is contrary to the prohibition of forced labour within the meaning of Article 1, paragraph 2 (see Cyprus, paragraph 4), no longer applies to seamen on ships flying the German, Danish, Spanish, Greek, Dutch or Norwegian flags. (Negotiations on the subject with Italy have ended and it remains only to complete certain formalities.) Merchant shipping legislation was again amended in 1979 and 1988 in compliance with the Charter.

3. The 1968 Law Reform (Scotland) Act and the 1969 Family Law Reform Act changed the status of children born out of wedlock and provided protection for their inheritance rights (Article 17).

4. Since April 1983, it has been possible for the free employment services to handle the placement of executives at an employer's request in place of the special executive recruitment service, for which employers have to pay (Article 1, paragraph 3).

5. Closed shop legislation has been progressively amended since 1982 to bring it into line with Article 5 of the Charter, with which it was previously considered incompatible. Under the 1988 Employment Act, any dismissal on grounds of trade union membership or non-membership is considered unjustifiable, with the result that the protection of trade union freedom is considerably improved. Also, the law prohibiting employers from taking measures other than dismissal in order to prevent or dissuade a worker from joining or not joining a trade union or from taking part in trade union activities has been extended to cases in which a closed shop agreement exists.

APPENDIX III

COUNTRIES VISITED BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT) AND REPORTS MADE PUBLIC

I. COUNTRIES VISITED BY THE CPT

VISITS CARRIED OUT IN 1990:

Periodic visits
- Austria (20-27/5/90)
- Malta (1-9/07/90)
- United Kingdom (29/07-10/08/90)
- Denmark (2-8/12/90)

Ad hoc visit
- Turkey (9-21/09/90)

VISITS CARRIED OUT IN 1991:

Periodic visits
- Spain (1-12/04/91)
- Sweden (5-14/05/91)
- Switzerland (21-29/07/91)
- France (27/10-8/11/91)
- Germany (8-20/12/91)

Ad hoc visit
- Turkey (29/09-7/10/91)

VISITS CARRIED OUT IN 1992:

Periodic visits
- Portugal (19-27/01/92)
- Italy (15-27/03/92)
- San Marino (25-27/03/92)
- Finland (10-20/05/92)
- Netherlands (30/08-8/09/92)
- Cyprus (2-9/11/92)
- Turkey (22/11-3/12/92)

VISITS CARRIED OUT IN 1993:

Periodic visits
- Luxembourg (17-25/01/93)
- Greece (14-26/03/93)
- Liechtenstein (14-16/04/93)

II. REPORTS MADE PUBLIC

CPT/Inf(91)10	-	Report to the Austrian Government on the Visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 27 May 1990 (45 p.)
CPT/Inf(91)11	-	Comments of the Austrian Government on the Report by the CPT on its Visit to Austria from 20 to 27 May 1990 (11 p.)
CPT/Inf(91)12	-	Report to the Danish Government on the Visit to Denmark carried out by the CPT from 2 to 8 December 1990 (75 p.)
CPT/Inf(91)15	-	Report to the United Kingdom Government on the Visit to the United Kingdom carried out by the CPT from 29 July to 10 August 1990 (81 p.)
CPT/Inf(91)16	-	Response of the United Kingdom Government to the Report of the CPT on its Visit to the United Kingdom from 29 July to 10 August 1990 (55 p.)
CPT/Inf(92)4	-	Report to the Swedish Government on the Visit to Sweden carried out by the CPT from 5 to 14 May 1991 (66 p.)
CPT/Inf(92)5	-	Report to the Maltese Government on the Visit to Malta carried out by the CPT from 1 to 9 July 1990 (40 p.)
CPT/Inf(92)6	-	Response of the Swedish Government to the Report of the CPT on its Visit to Sweden from 5 to 14 May 1991 (66 p.)
CPT/Inf(93)1	-	Public Statement on Turkey adopted on 15 December 1992 (10 p.)
CPT/Inf(93)2	-	Rapport au Gouvernement de la République Francaise relatif à la visite effectuée par le CPT en France du 27 octobre au 8 novembre 1991 et Réponse du Gouvernement de la République Francaise (215 p.)
CPT/Inf(93)3	-	Rapport au Conseil Fédéral Suisse relatif à la visite du CPT effectuée en Suisse du 21 au 29 juillet 1991 (91 p.)
CPT/Inf(93)4 and Addendum	-	Prise de Position du Conseil Fédéral Suisse relative au Rapport du CPT établi suite à sa visite effectuée en Suisse du 21 au 29 juillet 1991 (28 p. and 70 p.)
CPT/Inf(93)7	-	Follow-Up Report of the Swedish Government in Response to the Report of the CPT on its Visit to Sweden from 5 to 14 May 1991 (25 p.)
CPT/Inf(93)8	-	Report to the Finnish Government on the Visit to Finland carried out by the CPT from 10 to 20 May 1992 (66 p.)
CPT/Inf(93)9	-	Follow-Up Report of the United Kingdom Government in response to the Report of the CPT on its Visit to the United Kingdom from 29 July to 10 August 1990 (34 p.)

APPENDIX IV

KEY TEXTS CONCERNING EQUALITY BETWEEN WOMEN AND MEN

Adopted texts

- See the adopted texts mentioned in the Collection of the Council of Europe's work relating to equality between women and men (1950-1988) and in the Collection for the years 1989-1992

- European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children (1980) (Treaty N° 105)

Workshops, Seminars, colloquies, conferences

- See the adopted texts mentioned in the Collection of the Council of Europe's work relating to equality between women and men (1950-1988) and in the Collection for the years 1989-1992

- Educational research workshop on "Sex stereotyping in schools" (Honefoss, Norway) 5-8 May 1981 - Final report (Doc. DECS/Rech (81) 37)

- Council of Europe Teachers' Seminar on "Sex stereotypes in schools - the role and the responsibility of the teacher" (Donaueschingen, 22-27 November 1982) - Report (Doc. DECS/EGT (84) 6)

- Legal problems concerning unmarried couples (Proceedings of the 11th Colloquy on European Law, Messina 1981) (1982) (ISBN 92 871 0157 4)

- European Population Conference (September 1982) - Report on "Participation in economic activity and changing role of women" (by Charlotte Höhn), in Proceedings, pages 129-147

- 15th Criminological Research Conference (November 1982) - Report on sexual violence against women by Ms A. Snare (Doc. PC-CRC (83) 2 rev. pp. 48-72)

- Seminar on the contribution of the media to the promotion of equality between women and men (June 1983) - Proceedings (ISBN 92 871 0314 3)

- Symposium on "Human rights education in schools in Western Europe" (Vienna, 17-20 May 1983) - Report (DECS/EGT (84) 25)

- Colloquy on "Woman and migration : cultural and educational aspects" (19-21 November 1984) - Report (Doc. DECS/EGT (85) 28)

- 3rd Conference of European Ministers responsible for migration affairs (1987) - Document on immigrant women (Doc. MMG-3 (87) 3)

- Council of Europe 36th Teachers' Seminar on "Equal opportunities for girls: the role of the primary school" (June 1987) - Report (Doc. DECS/EGT (87) 37 E)

- Colloquy on violence within the family : measures in the social field (November 1987) - Proceedings

- Educational research workshop on gifted children and adolescents - Research and education in Europe (July 1991) - Gifted girls : a case of wasted talent? (Doc. DECS/Rech (91) 31)

- Seminar on "The democratic principle of equal representation - Forty years of Council of Europe activity" (Strasbourg, 6-7 November 1989) - Proceedings

- Seminar on participation by women in decisions concerning regional and environmental planning (October 1990) - Proceedings

- Seminar on action against traffic in women and forced prostitution as violations of human rights and human dignity (Strasbourg, 25-27 September 1991) - Proceedings

- 3rd Round Table with European Ombudsmen (7-8 November 1991). Human rights and democracy - Proceedings

Studies

- "Education and equality of opportunity for girls and women", by Professor Dr Dessaur and Dr van Vleuten (1979) (Doc. CME/XI (79) 4)

- National institutional and non-institutional machinery set up in member States of the Council of Europe to promote equality between women and men - Comparative study by Eliane Vogel-Polsky (1985)

- The situation of women in the political process in Europe (1984)

- Positive action for the benefit of women (Doc. EG (86) 1)

- Equality of treatment between women and men in the social security field (1985)

- La femme dans le monde du travail. Cahier N° 5. Jurisprudence du Comité d'experts indépendants de la Charte sociale européenne. Strasbourg, 1987. (In French only.)

- Legal and social situation of women in agriculture in the member States of the Council of Europe (1988) (Doc. EOC-CR/CEEG (88) 2)

- The Council of Europe's standard setting activities relating to equality of the sexes, by Pascale Boucaud (1989) (Doc. EG (89) 2)

- "Positive action and the constitutional and legislative hindrances to its implementation in the member States of the Council of Europe", by Eliane Vogel-Polsky (1989) - (Doc. EG (89) 1)

- Sexual equality in the European Convention of human rights. A survey of Case-Law by Ms Maud Buquicchio-De Boer (Doc. EG (89) 3)

- Ways and means of improving the position of women in politics, by Mariette Sineau (Doc. EG (89) 4)

- Sexual violence against women - Contribution to a strategy for countering the various forms of such violence in the Council of Europe member States (1991) by Ms Adda Garcia (Doc. EG (91) 1).

APPENDIX V

SYNOPSIS OF COUNCIL OF EUROPE CO-OPERATION AND ASSISTANCE PROGRAMMES WITH RESPECT TO COUNTRIES OF CENTRAL AND EASTERN EUROPE

as at 1 May 1993[1]

I. Membership of Organisation: 26 States

Most recent member States:

Bulgaria (7 May 1992); Hungary (6 Nov. 1990); Poland (26 Nov. 1991)

[The Czech and Slovak Federal Republic was a member from 21 February 1991 until 31 December 1992.]

Applications for membership:

Albania (6 May 1992)	Latvia (13 Sept. 1991)	Slovak Rep. (1 Jan. 1993)
Belarus (12 Mar. 1993)	Lithuania (18 Sept. 1991)	Slovenia (29 Jan. 1992)
Croatia (11 Sept. 1992)	Moldova (20 Apr. 1993)	Ukraine (14 July 1992)
Czech Rep. (1 Jan. 1993)	Romania (19 Dec. 1991)	
Estonia (13 Sept. 1991)	Russia (7 May 1992)	

have formally applied for full membership.

II. European Convention on Human Rights. Ratifications:

Bulgaria	(7 Sept. 1992)	Hungary	(5 Nov. 1992)
[Czechoslovakia:	18 Mar. to 31 Dec.1992]	Poland	(19 Jan. 1993)

Acceptance of right of individual petition (Art. 25) and compulsory jurisdiction of European Court of Human Rights (Art. 46):

	Art. 25	Art. 46
Bulgaria	7 Sept. 1992	7 Sept. 1992
Hungary	5 Nov. 1992	5 Nov. 1992
Poland	1 May 1993	1 May 1993
[Czechoslovakia	18 Mar.-31 Dec.1992	18 Mar.-31 Dec. 1992]

III. Special Guest Status with the Parliamentary Assembly of the Council of Europe

To date:	Albania (25 Nov. 1991)	Latvia (18 Sept. 1991)	Slovak Rep. (14 Jan. 1993)
	Belarus (16 Sept. 1992)	Lithuania (18 Sept. 1991)	Slovenia (3 Feb. 1992)
	Croatia (4 May 1992)	Moldova (5 Feb. 1993)	Ukraine (16 Sept. 1992)
	Czech Rep. (14 Jan. 1993)	Romania (1 Feb. 1991)	
	Estonia (18 Sept. 1991)	Russia (14 Jan. 1992)	

have Special Guest Status.

Armenia (22 Dec. 1991) Azerbaijan (24 Jan.1992) Georgia (4 Mar. 1993)

have requested Special Guest Status.

Special Guest Status was introduced by the Parliamentary Assembly in 1989 to forge closer links with the Parliaments of Central and East European countries. Guest Status Parliaments send

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[1] Estonia, Lithuania and Slovenia became members of the Council of Europe on 14 May 1993 (after this report was written), bringing the total membership to 29 States. All three signed the European Convention on Human Rights when acceding to the Organisation.

delegations reflecting different currents of opinion to plenary sessions in Strasbourg and to Committee meetings.

IV. Demosthenes Programme

The Council of Europe has set up the "Demosthenes" programme to assist the countries of Central and Eastern Europe to carry out their constitutional, legislative and administrative reforms. The programme involves practical co-operation in the form of meetings of experts, workshops, training courses, scholarships and study visits.

The countries benefiting from the various programmes are:

- the three Council of Europe member states in Central and Eastern Europe: Bulgaria, Hungary and Poland;
- the following non-member states in Central and Eastern Europe: Albania, Croatia, the Czech Republic, Estonia, Latvia, Lithuania, Romania, the Slovak Republic and Slovenia;
- a number of former Soviet republics for which a special programme "Demosthenes-bis", has been launched: Belarus, Moldova, the Russian Federation and Ukraine, which are co-operating with the Council in all fields; Armenia, Azerbaijan and Georgia, with which the Committee of Ministers has authorised the opening of dialogue and an exchange of information on human rights and the rule of law; finally, Kazakhstan and Kyrgyzstan, which are receiving ad hoc technical assistance, but have no prospect of joining the Council.

All these programmes are funded from a specific vote in the Council of Europe general budget (Vote IX), totalling 50 million francs in 1993. This is supplemented by voluntary contributions from a number of member States, which make it possible to expand certain activities.

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APPENDIX VI

SELECTED LIST OF RECOMMENDATIONS, RESOLUTIONS AND DECLARATIONS ADOPTED BY THE COMMITTEE OF MINISTERS CONCERNING HUMAN RIGHTS

Reference	Subject
Resolution (68) 30	Measures to be taken against incitement to racial, national and religious hatred
Resolution (70) 17	UN Covenant on Civil and Political Rights and the European Convention on Human Rights: Procedure for dealing with interstate complaints
Resolution (73) 22	Protection of the privacy of individuals vis-à-vis electronic data banks in the private sector
Resolution (74) 26	Right of reply - position of the individual in relation to the press
Resolution (77) 31	Protection of the individual in relation to the acts of administrative authorities
Declaration on territorial asylum (1977)	
Resolution (78) 41	Teaching of human rights
Recommendation R (79) 16	Promotion of human rights research in the member States of the Council of Europe
Recommendation R (81) 19	Access to information held by public authorities
Declaration regarding intolerance - a threat to democracy (1981)	
Declaration on the freedom of expression and information (1982)	
Recommendation R (83) 2	Legal protection of persons suffering from mental disorder placed as involuntary patients
Recommendation R (84) 17	Equality between women and men in the media
Recommendation R (85) 2	Legal protection against sex discrimination
Recommendation R (85) 7	Teaching and learning about human rights in schools
Resolution (85) 8	Co-operation between the Ombudsmen of member States and between them and the Council of Europe
Recommendation R (85) 13	Institution of the Ombudsman
Recommendation R (87) 3	European Prison Rules

Recommendation R (87) 8	Conscientious objection to compulsory military service
Recommendation R (89) 14	Ethical issues of HIV infection in health care and social settings
Recommendation R (90) 3	Medical research on human beings
Recommendation R (91) 16	Training of social workers and human rights
Recommendation R (93) 1	Effective access to the law and to justice for the very poor

APPENDIX VII

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- Yearbook of the European Convention on Human Rights
- The Council of Europe and the Protection of Human Rights
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- International Protection of Human Rights (1989)
- The European Social Charter and its Protocol
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- Short guide to the European Convention on Human Rights (1991)
- Stocktaking on the European Convention on Human Rights (1954-88) and supplements thereto
- Human rights in international law. Basic texts (1992)
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- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)
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  1st General Report: November 1989 - December 1990 (CPT(91)3)
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- Collection of Council of Europe's work on equality between women and men (2nd edition) (1950-88)
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